VOL. I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 131

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

No. 132

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 5, 1941
CERTIORARI GRANTED OCTOBER 13, 1941

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,
Appellee,

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM CAMPBELL; AUSTIN FUREY; GEORGE BAGLEY; JOSEPH BENDER; MICHAEL CAHILL; JOSEPH DEEGAN; ROBERT DILLON; FRANK DOWNS; JOHN GAUGHAN; JOHN HORAN; ANDY JAKAITIS; ABRAHAM KLENOFSKY; LEONARD LA MARNE; MANUEL MAGAN; JAMES MURPHY; GEORGE NEEDELMAN; BERNARD L. RANDAZZO; SAMUEL REICHLER; MORRIS REICHLER; HARRY ZOLLINGER; THOMAS SHARKEY; WILLIAM SIMPSON; TONY VENDITTI; PETER WASKIEWICZ; EDWARD WEINHEIMER and JOHN WEINHEIMER,
Defendants-Appellants.

Docket
C-102-394
C-102-395

Statement Under Rule 13.

This criminal cause in the United States District Court for the Southern District of New York was begun on May 31, 1938, by the filing of two indictments against the defendant Local 807 Union and seventy-five individual defendants. The indictments were No. C-102-395 for Violation of the Anti-Racketeering Act (Act of Congress of January 18, 1934, entitled "An Act to Protect Trade and Commerce against Interference by Violence, Threats, Coercion or Intimidation" [Public Act No. 376, 73d Congress, Sec. 2248]), and No. C-102-394 for Violation of the Sherman Anti-Trust Act (Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" [26 Stat. 209]). On the same day (May 31, 1938) bench warrants were ordered against the individual defendants.

4 *Statement Under Rule 13.*

On June 7, 1938, the defendant-appellant Local 807, by William Devery, President, and defendants-appellants William Campbell, Austin Furey, George Bagley, Joseph Bender, Robert Dillon, Frank Downs, John Horan, Andy Jakakas, Abraham Klenofsky, Leonard La Marne, Manuel Magan, George Needelman, Bernard L. Randazzo, Thomas Sharkey, William Simpson, Tony Venditti, Peter Waskiewicz, Edward Weinheimer and John Weinheimer pleaded "Not Guilty." On June 9, 1938, defendants-appellants Michael Cahill, Joseph Deegan, Samuel Reichler and Morris Reichler pleaded "Not Guilty." On June 13, 1938, defendant-appellant James Murphy pleaded "Not Guilty." On July 7, 1938, defendant-appellant John Gaughan
5 pleaded "Not Guilty," and on March 28, 1940, defendant-appellant Harry Zollinger, indicted as "Richard Roe," pleaded "Not Guilty." All defendants were released on bail, recognizances having been filed for all defendants who appeared and pleaded "Not Guilty."

Notices of appearances were filed for various defendants by Charles T. Rice, James D. C. Murray, Harold F. Berg, Edward C. Maguire, Anthony J. Graziano.

On June 22, 1938, defendants Cornelius J. Noonan, Joseph Akalitis, George Bagley et al., Michael Murtagh, and the defendant Union served and filed affidavits and orders to show cause why the indictments should not be dismissed and also demurrers to the said indictments. The motions were argued and decisions reserved, and on June 29, 1938, the demurrers were overruled and the motions denied, an opinion being filed by Hon. Vincent L.
6 Leibell, United States District Judge.

On October 25, 1938, various defendants appearing by Rice & Maguire, by Louis Mishell and by James D. C. Murray served and filed notices of motion and affidavits for a bill of particulars. On the same day a stipulation was filed that said motions be made applicable to both indictments. The motions were denied by Hon. John C. Knox, United States District Judge.

On July 17, 1939, the defendants Austin Furey and William Campbell pleaded guilty to Indictment C-102-394.

On April 15, 1940, upon motion of the Government,

Indictments C-102-394 and C-102-395 were consolidated for trial. On the same date the defendants Austin Furey and William Campbell withdrew their pleas of guilty and pleaded not guilty, and the trial was begun as to the defendants-appellants upon the consolidated indictments. The trial was concluded on May 23, 1940. During the course of the trial, upon motion of the Government, the indictments were dismissed as to the defendants Flaherty, Brennan, Devery, Hickey, Clarke, Flanagan, Mulqueen, Pelker, Duffy, Powers, Pollock, Noonan, Macomber and Katz. A motion for a severance as to the defendant Stolowitz was granted during the trial.

On May 24, 1940, the jury returned its verdict. All of the defendants-appellants were found guilty upon the Sherman Act indictment, C-102-394, and upon Count One of the Anti-Racketeering indictment, C-102-395.

The defendants George Bagley, Joseph Bender, Michael Cahill, John Gaughan, Manuel Magan and James Murphy were also found guilty on Count Two of Indictment C-102-395.

The defendants Local 807, William Campbell, Robert Dillon, Frank Downs, Austin Furey, Abraham Klenofsky, George Needelman, Bernard L. Randazzo, Samuel Reichler, William Simpson, Tony Venditti and Edward Weinheimer were found guilty on all counts of both indictments.

On May 28, 1940, defendants' counsel moved to set aside the verdicts and for an arrest of judgment, and again on June 7, 1940, the motions were renewed as to C-102-395 on constitutional grounds. The motions were denied.

On June 19, 1940, the convicted defendants were sentenced as follows: On Indictment C-102-394—Local 807, etc., fined $2,000; George Bagley, three months; Joseph Bender, six months; Michael Cahill, three months; William Campbell, one year, to run concurrently with Counts 2, 3 and 4 of Indictment C-102-395 and consecutive to sentence on Count 1 of Indictment C-102-395, and suspended; Joseph Deegan, one month; Robert Dillon, one

year, to run concurrently with Counts 2, 3 and 4 of Indictment C-102-395 and consecutive to sentence on Count 1 of Indictment C-102-395, and suspended; Frank Downs, one year; Austin Furey, one year, to run concurrently with Counts 2, 3 and 4 of Indictment C-102-395 and consecutive to sentence on Count 1 of Indictment C-102-395, and suspended; John Gaughan, one month; John Horan, three months; Andy Jakakis, six months; Abraham Klenofsky, six months; Leonard La Marne, three months; Manuel Magan, one year and suspended; James Murphy, three months; George Needelman, one year, to run concurrently with Counts 2, 3 and 4 of Indictment C-102-395
11 and consecutive to sentence on Count 1 of Indictment C-102-395, and suspended; Bernard L. Randazzo, three months; Samuel Reichler, six months; Morris Reichler, one year and suspended; Thomas Sharkey, one month; William Simpson, two months; Tony Venditti, two months; Peter Waskiewciz, one year and suspended; Edward Weinheimer, one year, to run concurrently with Counts 2, 3 and 4 of Indictment C-102-395 and consecutive to sentence on Count 1 of Indictment C-102-395, and suspended; John Weinheimer, six months, and Harry Zollinger, seven months. Bail was continued.

On Indictment No. C-102-395, the convicted defendants were sentenced as follows: Local Union 807, etc., fined $2,000 on each of Counts 1, 2, 3 and 4; George Bagley, one year on each of Counts 1 and 2, to run concurrently,
12 and suspended; Joseph Bender, one year on each of Counts 1 and 2, to run concurrently, and suspended; Michael Cahill, one year on each of Counts 1 and 2, to run concurrently, and suspended; William Campbell, two years on Count 1, one year on Counts 2, 3 and 4, to run concurrently with each other and with sentence on C102-394, execution of sentence on Counts 2, 3 and 4 being suspended; Joseph Deegan, one year on Count 1 and suspended; Robert Dillon, one year and one day on Count 1,

one year on each of Counts 2, 3 and 4, to run concurrently with each other, execution of sentence on Counts 2, 3 and 4 being suspended; Frank Downs, one year on each of Counts 1, 2, 3 and 4, to run concurrently, and suspended; Austin Furey, two years on Count 1, one year on each of Counts 2, 3 and 4, to run concurrently with each other and with sentence on C-102-394, execution of sentence on Counts 2, 3 and 4 being suspended; John Gaughan, one year on each of Counts 1 and 2, to run concurrently, and suspended; John Horan, one year on Count 1 and suspended; Andy Jakakas, one year on Count 1 and suspended; Abraham Klenofsky, one year on each of Counts 1, 2, 3 and 4 and suspended; Leonard La Marne, one year 14
on Count 1 and suspended; Manuel Magan, one year on each of Counts 1 and 2, to run concurrently with each other and with sentence on C-102-394, all suspended; James Murphy, one year on each of Counts 1 and 2, to run concurrently, and suspended; George Needelman, one year and one day on Count 1, one year on each of Counts 2, 3 and 4, to run concurrently with each other and with sentence on C-102-394, execution of sentence on Counts 2, 3 and 4 being suspended; Bernard L. Randazzo, one year on each of Counts 1, 2, 3 and 4, to run concurrently, and suspended; Samuel Reichler, one year on Counts 1, 2, 3 and 4, to run concurrently, and suspended; Morris Reichler, one year on Count 1, to run concurrently with sentence on C-102-394, both suspended; Thomas Sharkey, one year
on Count 1 and suspended; William Simpson, one year on 15
each of Counts 1, 2, 3 and 4, to run concurrently, and suspended; Tony Venditti, one year on each of Counts 1, 2, 3 and 4, to run concurrently, and suspended; Peter Waskiewicz, one year on Count 1, to run concurrently with sentence on C-102-394, both suspended; Edward Weinheimer, eighteen months on Count 1, one year on each of Counts 2, 3 and 4, to run concurrently with each other

16 *Statement Under Rule 13.*

and with sentence on C-102-394 and consecutive to sentence on Count 1, execution of sentence on Counts 2, 3 and 4 being suspended; John Weinheimer, one year on Count 1 and suspended; Harry Zollinger, one year on Count 1 and suspended.

Defendants were placed on probation for a period of three years to begin at termination of prison sentences, subject to the standing Probation Order of this Court. Sentences of all defendants to one year and less are to be served at the Federal House of Detention, New York City, N. Y. Judgments were duly filed against each of the convicted defendants.

17 On June 24, 1940, notices of appeal and grounds of appeal were filed for all convicted defendants, and on June 26, 1940, bail was fixed and bail bonds pending appeal were filed for each of the said defendants.

On June 26, 1940, an amended judgment was filed reducing the judgment as to defendant Frank Downs to four months. On the same day orders were duly made and filed extending the time of defendants-appellants to settle and file their bill of exceptions to and including October 1, 1940.

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Docket Entries.

Docket C-102-394.

CRIMINAL DOCKET.

THE UNITED STATES

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, WILLIAM DEVERY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS CLARKE, THOMAS KEHOE, MICHAEL MURTAGH, J. NOONAN, FRANKIE "DOE", CHARLES HOROWITZ, A. SLACTA, "JOHN DOE", "JOHN" ACKALITIS, GEORGE BAGLEY, JOSEPH BOLTON, JOSEPH BENDER, JOHN BROWN, MICHAEL CAHILL, HARRY CASEY, JOHN CELECIA, JOSEPH DEEGAN, VINCENT DEL DUCA, HENRY DELGADO, JOSEPH DEVLIN, ROBERT DILLON, FRANK DOWNS, JOSEPH DUFFY, JAMES FITZGERALD, J. FLANAGAN, EDWARD FRANZ, JOHN GAUGHAN, FRED HARRIS, FRANCIS J. HEARN, JOHN HORAN, ANDY JAKAKAS, HARRY JARVIS, SAM JONES, M. KATZ, ABRAHAM KLENOFSKY, alias "RED KLEIN", LEONARD LA MARNE, "JOHN" LACEY, LOUIS LA ROSE, alias "LOUIS LA ROSA", CARL MACOMBER, MANUEL MAGAN, THOMAS MOLLOY, "MOSELY" MULQUEEN, JOSEPH MURPHY, GEORGE NEEDELMAN, JOHN NICOLELLIS, GEORGE O'NEIL, WILLIAM PELKER, ELY POLLOCK, "FRENCHIE" POWERS, MURRELL, PROCTOR, BERNARD L. RANDAZZO, GEORGE REGAN, SAMUEL REICHLER, MORRIS REICHLER, "HARROW ROE", "RICHARD ROE", RICHARD SAVAGE, EMIL SCHWARZ, EMANUEL SCHWARTZ, THOMAS SHARKEY, WILLIAM SIMPSON, FRANCIS SINCLAIR, FRANK STOLOWITZ, DAVID TELFER, TONY VENDITTI, PETER WASKIEWICZ, FRANK WEICK, EDWARD WEINHEIMER, JOHN WEINHEIMER, FRANK WEST, THOMAS L. HICKEY.

19

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21

Violation of Sherman Anti-Trust.

Date	*Proceedings*
1938	
May 31	Filed indictment.
31	Bench warrants ordered.

22 *Docket Entries No. 102-394.*

Date	Proceedings
1938	
June 7	Filed notice of appearance. Charles P. Rice, atty. William Campbell and Austin Furey.
7	Filed notice of appearance. James D. C. Murray, atty. for Joseph Ackalitis et al.
7	Filed notice of appearance. Harold F. Berg, atty. for Thomas Hickey and Thomas Clarke.
7	Filed notice of appearance for William Devery, Sam Brennan, John Flaherty, Thomas Kehoe and Local #807 by Edward C. Maguire, attorney.
7	Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America plead not guilty by William Devery, President.
7	William Devery pleads not guilty. Bail fixed in the sum of $5000 to cover this indictment and C 102/395.
7	Thomas L. Hickey pleads not guilty. Bailed fixed in the sum of $5000 to cover this indictment and C 102/395.
7	John Flaherty pleads not guilty. Bail fixed in the sum of $5000 to cover this indictment and C 102/395.
7	William Campbell pleads not guilty. Bail fixed in the sum of $15,000 to cover this indictment and C 102/395.
7	Austin Furey pleads not guilty. Bail fixed in the sum of $15,000 to cover this indictment and C 102/395.
7	Thomas Clarke pleads not guilty. Bail fixed in the sum of $5000 to cover this indictment and C 102/395.
7	Thomas Kehoe pleads not guilty. Bail fixed in the sum of $5000 to cover this indictment and C 102/395.

Date 1938	*Proceedings*
	The above defendants paroled to 4 P. M. in custody of their counsel, Mr. Maguire to furnish bail.
June 7	J. Noonan, correct name Cornelius J. Nooman, pleads not guilty. Bail fixed in the sum of $3500 to cover this indictment and C 102/395. Paroled in custody of his counsel, J. Aronstein, to 4 P. M. to give bail.
7	"John" Ackalitis, true name Joseph Ackalitis, pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.
7	George Bagley pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395. 26
7	Joseph Bolton pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Joseph Bender pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	John Celecia pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Henry Delgado pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395. 27
7	Robert Dillon pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Frank Downs pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Joseph Duffy pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.

28 *Docket Entries No. 102-394.*

Date	Proceedings
1938	
June 7	James Fitzgerald pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	J. Flangan, correct name James Flangan, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Fred Harris pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	John Horan pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment
29	and C 102/395.
7	Andy Jakakas pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Harry Jarvis pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	M. Katz, correct name Max Katz, pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.
7	Abraham Klenofsky pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.
7	Leonard La Marne pleads not guilty. Bail fixed
30	in the sum of $1500 to cover this indictment and C 102/395.
7	Mannel Magan pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Thomas Molloy pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	George Needelman pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.

Date 1938		*Proceedings*
June	7	John Nicolellis pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	George O'Neil pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.
	7	Eli Pollock pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	"Frenchie" Powers, true name Francis Powers, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395. 32
	7	Bernard L. Randazzo pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	George Regan pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	Richard Savage pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	Thomas Sharkey pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395.
	7	William Simpson pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment 33 and C 102/395.
	7	Francis Sinclair pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	Frank Stolowitz, correct name George Stolowitz, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	7	Tony Venditti pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.

34 *Docket Entries No. 102-394.*

Date 1938	Proceedings
June 7	Peter Waskiewicz pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
7	Edward Weinheimer pleads not guilty. Bail fixed in the sum of $3500 to cover this indictment and C 102/395.
7	John Weinheimer pleads not guilty. Bail fixed in the sum of $3500 to cover this indictment and C 102/395.
7	Frank West pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
35	
	All defendants from "John" Ackalitis to Frank West paroled in custody of their attorney, James D. C. Murray, until 4 P. M. to give bail.
7	Defendants allowed 15 days to make motions. Leibell, J. Defendants to be fingerprinted as a condition of bail. Leibell, J.
7	Filed recognizance for Joseph Ackalitis, $2500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for George Bagley, $1500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for Joseph Bender, $1500. National Surety Corpn. to cover C 102/395.
36 7	Filed recognizance for Joseph Bolton, $1500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for William Campbell, $15,000. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for John Celecia, $1500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for Thomas Clarke, $5,000. National Surety Corpn. to cover C 102/395.

Date		*Proceedings*
1938		
June	7	Filed recognizance for Henry Delgado, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for William Devery, $5000. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Robert Dillon, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Frank Downs, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Joseph Duffy, $2500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for James A. Fitzgerald, $1500. National Surety Corpn. to cover C 102/395. 38
	7	Filed recognizance for John Flaherty, $5000. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for James Flanagan, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Austin Furey, $15,000. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Fred Harris, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for John Horan, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Thomas L. Hickey, $5000. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Andy Jakakas, $1500. National Surety Corpn. to cover C 102/395. 39
	7	Filed recognizance for Harry Jarvis, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Max Katz, $2500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Thomas Kehoe, $5000. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Abraham Klenofsky, $2500. National Surety Corpn. to cover C 102/395.

Date		*Proceedings*
1938		
June	7	Filed recognizance for Leonard La Marne, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Manuel Magan, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Thomas Molloy, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for George Needelman, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for John Nicolellis, $1500. National Surety Corpn. to cover C 102/395.
41	7	Filed recognizance for George O'Neil, $2500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Eli Pollack, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Francis Powers, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Bernard Randazzo, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for George Regan, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Richard Savage, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Thomas Sharkey, $2500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for William Simpson, $1500.
42		National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Francis Sinclair, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for George Stolowitz, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Tony Venditti, $1500. National Surety Corpn. to cover C 102/395.
	7	Filed recognizance for Peter Waskiewicz, $1500. National Surety Corpn. to cover C 102/395.

Date	*Proceedings*
1938	
June 7	Filed recognizance for Edward Weinheimer, $3500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for John Weinheimer, $3500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for Frank West, $1500. National Surety Corpn. to cover C 102/395.
7	Filed recognizance for Cornelius J. Noonan, $3500. Continental Casualty to cover C 102/395.
9	Samuel Brennan pleads not guilty. Bail fixed in the sum of $5000 to cover this indictment and C 102/395. 44
9	Michael Cahill pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
9	Joseph Deegan pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
9	Joseph Devlin pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
9	Edward Franz pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
9	Francis J. Hearn, correct name Francis J. Henn, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395. 45
9	Carl Macomber, correct name Carrol Macomber, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
9	"Mosley" Mulqueen, correct name Michael Mulqueen, pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.

46 *Docket Entries No. 102-394.*

Date		*Proceedings*
1938		
June	9	William Pelker pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	9	Murrell Proctor pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	9	Morris Reichler pleads not guilty. Bail fixed in the sum of $3500 to cover this indictment and C 102/395.
	9	Emil Schwarz pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment
47		and C 102/395.
	9	Emanuel Schwartz pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
	9	Frank Weick pleads not guilty. Bail fixed in the sum of $1500 to cover this indictment and C 102/395.
		Above defendants paroled in custody of their counsel, James D. C. Murray, to 4 P. M. to give bail.
	9	Michael Murtagh pleads not guilty. Bail fixed in the sum of $2500 to cover this indictment and C 102/395. Paroled in custody of his counsel, Louis Mishell, to 4 P. M. to give bail.
48	9	A. Slacta, correct name Alex Slacta, pleads not guilty (no bail). Paroled in custody of his counsel, Anthony J. Graziano.
	9	Samuel Reichler pleads not guilty. Bail fixed in the sum of $3500 to cover this indictment and C 102/395. Paroled to 4 P. M. in custody of his counsel, James D. C. Murray, to give bail.
	9	Defendants to be fingerprinted as a condition of bail. Leibell, J.
	9	Filed recognizance, Samuel Brennan, $5000. National Surety Corpn. to cover C 102/395.

Date		*Proceedings*
1938		
June	9	Filed recognizance, Michael J. Cahill, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Joseph M. Deegan, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Joseph Devlin, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Edward Franz, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Francis J. Henn, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Carroll Macomber, $1500. National Surety Corpn. to cover C 102/395. 50
	9	Filed recognizance, Michael Mulqueen, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Michael Murtagh, $2500. Continental Casualty Co. to cover C 102/395.
	9	Filed recognizance, William Pelker, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Murrell Proctor, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Morris Reichler, $3500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Samuel Reichler, $3500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Emil Schwarz, $1500. National Surety Corpn. to cover C 102/395. 51
	9	Filed recognizance, Emanuel Schwartz, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed recognizance, Frank Weick, $1500. National Surety Corpn. to cover C 102/395.
	9	Filed notice of appearance. Anthony J. Graziano, Esq., atty. for Alex Slacta.
	13	Joseph Murphy, true name James Murphy, pleads not guilty. Bail $1500 to cover this indictment and C 102/395. Paroled in cus-

52 *Docket Entries No. 102-394.*

Date 1938	*Proceedings*
	tody of his attorney, James D. C. Murray, to 4 P. M. to give bail. Deft. ordered fingerprinted. Leibell, J.
June 13	Filed recognizance for Joseph Murphy, true name James Murphy, $1,500. National Surety Corp. to cover this indictment and C 102-395.
20	Henry Casey, true name Harry Casey, pleads not guilty. Bail $1500 to cover C 102-395. Paroled to give bail. Leibell, J.
20	Filed recognizance for Harry Casey, $1500. National Surety Co. to cover C 102/395.
53 22	Filed affidavit and order to show cause why indictment should not be dismissed as to Cornelius J. Noonan, also demurrer.
22	Motion argued. Decision reserved. Leibell, J. (Demurrer overruled 7/28/38.)
22	Filed demurrer as to Joseph Ackalitis and George Bagley et al.
22	Filed notice of hearing and argument on demurrer as to Joseph Ackalitis and George Bagley et al.
22	Motion argued. Decision reserved. Leibell, J. (Overruled 7/28/38.)
22	Filed affidavit and order to show cause why
54	indictment should not be dismissed as to Michael Murtagh, also demurrer.
22	Motion argued. Decision reserved. Leibell, J. (Overruled 7/28/38.)
22	Filed demurrer as to Local #807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America et al.
22	Filed notice of hearing and argument on demurrer as to Local #807 etc. et al.

Date	Proceedings
1938	
June 22	Motion argued. Decision reserved. Leibell, J. (Overruled 7/28/38.)
23	Filed bench warrants (63) with marshal's return endorsed for each of the following defendants: "John" Ackalitis, George Bagley, Joseph Bender, Joseph Bolton, Samuel Brennan, Michael Cahill, William Campbell, John Celecia, Thomas Clarke, Joseph Deegan, Henry Delgado, William Devery, Joseph Devlin, Robert Dillon, Joseph Duffy, Frank Downs, James Fitzgerald, J. Flanagan, John Flaherty, Edward Franz, Austin Furey, Francis J. Hearn, Fred Harris, Thomas L. Hickey, John Horan, Andy Jakakas, Harry Jarvis, M. Katz, Thomas Kehoe, Abraham Klenofsky, Leonard La Marne, Carl Macomber, Manuel Magan, Thomas Molloy, "Mosley" Mulqueen, Joseph Murphy, Michael Murtagh, George Needleman, John Nicolellis, J. Noonan, George O'Neil, William Pelker, Eli Pollock, Frenchie Powers, Murrell Proctor, Bernard L. Randazzo, George Regan, Morris Reichler, Samuel Reichler, Richard Savage, Emanuel Schwartz, Emil Schwarz, William Simpson, Francis Sinclair, Thomas Sharkey, A. Slacta, Frank Stolowitz, Tony Venditti, Peter Waskiewicz, Frank Weick, John Weinheimer, Edward Weinheimer and Frank West. (To cover C 102/395 also.)
28	Filed amended demurrer as to Joseph Ackalitis et al. (To cover C 102/395.) (Overruled 7/28/38.)

58 *Docket Entries No. 102-394.*

Date		*Proceedings*
1938		
July	5	Filed stipulation extending Govt's time to file briefs in opposition to defts' demurrers to July 13, 1938 and extending defts' time to file reply briefs to July 20, 1938. "So ordered." Leibell, J. (This stipulation to cover indictment C 102/395.)
	7	Louis La Rosa bail $2500 } To cover
	7	John Gaughan bail $1500 } C 102/395
		Paroled until 4 P. M. in custody of their atty. to give bail. Knox, J.
59	7	Filed demurrer as to Louis La Rosa & John Gaughan. Referred to Leibell, J. Knox, J. (Overruled.)
	7	Filed recognizance for Louis La Rosa, $2500. National Surety Co. (To cover C 102/395.)
	7	Filed recognizance for John Gaughan, $1,500. National Surety Co. (To cover C 102/395.)
	20	Filed bench warrant, Harry Casey & marshal's return unable to find deft. 6/20/38.
	20	Filed bench warrant, John Gaughan & marshal's return unable to find deft. 7/1/38.
	20	Filed bench warrant, V. Del Duca & marshal's return unable to find deft. 7/1/38.
	29	Filed opinion #11-599. Overruling demurrers. Leibell, J.
60		
Sept.	26	Filed order overruling demurrer. Leibell, J.
Oct.	14	Filed stipulation that defts' motions for bills of particulars as to indictment C 102/395 be made applicable to this indictment and that the decision of Judge Knox on said motions be deemed also an adjudication of identical motions as to this indictment.

Date	*Proceedings*
1939	
Jan. 27	Filed bench warrant for David Telfer dated 6-1-38 & marshals return unable to find deft. 10-15-38.
Apr. 26	Sam Jones. Pleads not guilty. Bail $1500 to cover this indictment and C 102/395. Paroled to 4 P. M. to give bail. Deft. ordered fingerprinted. Mandelbaum, J.
26	Filed notice of appearance, by Harold F. Berg, atty. for Sam Jones.
26	Filed recognizance for Sam Jones, $1,500.00. National Surety Corp.
July 17	Before Knox, J., Austin Eurey, William Campbell. Both defendants withdraw their pleas of not guilty and plead guilty. Bails continued. Sentences adjourned until October 2, 1939 at 10:30 A. M. 62
	Case adjourned as to all other defendants for all purposes to October 2, 1939.
1940	
Mar. 27	John Doe. Bench warrant issued.
27	Filed affidavit for writ of habeas corpus ad prosequendum to produce. Robert Dillon. Issued writ ret. 4/1/40.
28	Harry Zollinger indicted as "Richard Roe" pleads not guilty. Bail $2500. Remanded. Mandelbaum, J. 63
28	Richard Roe. Bench warrant issued.
29	Filed notice of appearance of Joseph Aronstein and John J. Duff, attys. for deft. J. Noonan.
Apr. 1	Michael Murtagh. Bail discharged and defendant released in custody of his atty., Mr. Collins. Conger, J.
4	Filed writ of habeas corpus ad prosequendum as to Robert Dillon. Marshal's return "Served Officer H. Sieberglett, Rikers Is. Pen. 3/28/40."

64 *Docket Entries No. 102-394.*

Date 1940	Proceedings
Apr. 4	Filed bench warrant, Richard Roe, true name Harry Zollinger, and marshal's return "Deft. arrested 3/28/40."
10	Filed bench warrant, John Doe, and marshal's return "Unable to find deft" 3/27/40.
10	Filed remand, Harry Zollinger, 3/28/40. Mandelbaum, J.
10	Filed writ (copy) of habeas corpus ad prosequendum to produce Max Katz, and return "Served Warden of Great Meadow State Prison on 3/29/40."
65 13	Filed order that Max Katz be transferred from Great Meadow State Prison at Comstock, N. Y., temporarily to custody of U. S. Marshal and at the conclusion of the necessity for said Max Katz to appear, that he be returned to Great Meadow Prison, Comstock, N. Y. Hulbert, J.
22	Filed recognizance, Vincent Del Duca, $1500. Nat'l Surety Corp., surety.
29	Bench warrant issued as to Peter Waskiewicz.
29	Filed demand dated 4/18/40 as to D. J. Telfer. Hulbert, J.
29	Filed demand dated 4/22/40 as to D. J. Telfer. Hulbert, J.
66 May 8	Filed recognizance, Austin Furey, $15000. Continental Casualty Co., surety.
Apr. 15	Before: Murray Hulbert, J. Room 110. Trial begun on indictments C 102/394 and C 102/395 as severed and consolidated. See entries as to trial on C 102/395. Defts. William Campbell and Austin Furey withdraw their pleas of guilty to this indictment C 102/394 and enter pleas of not guilty. Bail continued.

Docket Entries No. 102-394. 67

Date 1940	*Proceedings*	
Apr. 18	Deft. David J. Telfer pleads not guilty. Bail $5000 to cover indictments C 102/394 and C 102/395. Remanded.	
22	Deft. Vincent Del Duca pleads not guilty. Bail $1500 to cover indictments C 102/394 and C 102/395.	
	Deft. David J. Telfer moves for reduction of bail to $2500. Granted, with consent of Gov't. Remand amended.	
May 7	Motion of National Surety Corp. to surrender deft. Austin Furey. Granted. Remanded. Bail $15,000 discharged covering both indictments C 102/394 and C 102/395. May be rewritten by an acceptable surety.	68
10	Filed bench warrant deft. Peter Waskiewicz arrested. Filed remand.	
10	Filed discharge (on original bail) deft. Peter Waskiewicz.	
21	Filed remand, Austin Furey, dated 5/7/1940. Hulbert, J.	
24	On consolidated trial of indictments C 102/394 and C 102/395, jury returned a verdict of guilty as to 27 defendants tried. See entries under C 102/395.	
28	Filed copy order directing that Max Katz be transferred from Great Meadow State Prison to the custody of U. S. Marshal for keeping at Detention Hdqtrs. until conclusion of proceedings. Memo endorsed: "Order satisfied. Hulbert, J., 5/25/40."	69
June 13	Filed order directing U. S. Atty. to pay Dr. M. Leonard Gottlieb $25 for services rendered in examining Peter Waskiewicz. Hulbert, J.	
13	Filed order directing U. S. Atty. to pay Dr. M. Leonard Gottlieb $50 for services rendered in examining George Stolowitz. Hulbert, J.	

70 *Docket Entries No. 102-394.*

Date	*Proceedings*
1940	
June 19	Filed recognizance, Robert Dillon, $3500, to cover C 102/394 & 395. Nat'l Surety Corpn. surety.
19	Filed 27 judgments under consolidated indictment C 102/395.
24	See C 102/395 for notices of appeal and grounds of appeal.
26	Filed bond pending appeal, Tony Venditti, $1500. National Surety Corp.
26	Filed bond pending appeal, Peter Waskiewicz, $1500. National Surety Corp.
71	
26	Filed bond pending appeal, Thomas Sharkey, $2500. National Surety Corp.
26	Filed bond pending appeal, Frank Downs, $1500. National Surety Corp.
26	Filed bond pending appeal, Andy Jakakas, $1500. National Surety Corp.
26	Filed bond pending appeal, John Gaughan, $1500. National Surety Corp.
26	Filed bond pending appeal, Austin Furey, $15,000. Continental Casualty Co.
26	Filed bond pending appeal, John Weinheimer, $3,500. National Surety Corp.
26	Filed bond pending appeal, Samuel Reichler, $3,500. National Surety Corp.
72	
26	Filed bond pending appeal, William Simpson, $1500. National Surety Corp.
26	Filed bond pending appeal, Harry Zollinger, $2500. National Surety Corp.
26	Filed bond pending appeal, Morris Reichler, $3,500. National Surety Corp.
26	Filed bond pending appeal, Abraham Klenofsky, $2,500. National Surety Corp.
26	Filed bond pending appeal, Leonard La Marne, $1,500. National Surety Corp.

Date	*Proceedings*
1940	
June 26	Filed bond pending appeal, Manual Magan, $1,500. National Surety Corp.
26	Filed bond pending appeal, George Bagley, $1,500. National Surety Corp.
26	Filed bond pending appeal, Michael Cahill, $1,500. National Surety Corp.
26	Filed bond pending appeal, Robert Dillon, $3,500. National Surety Corp.
26	Filed bond pending appeal, Bernard L. Randazzo, $1500. National Surety Corp.
26	Filed bond pending appeal, George Needelman, $1500. National Surety Corp. 74
26	Filed bond pending appeal, James Murphy, $1500. National Surety Corp.
26	Filed bond pending appeal, Joseph Bender, $1500. National surety Corp.
26	Filed bond pending appeal, Edward Weinheimer, $3500. National Surety Corp.
26	Filed bond pending appeal, John Horan, $1500.00. National Surety Corp.
26	Filed bond pending appeal, William Campbell, $15,000. National Surety Corp.
26	Filed bond pending appeal, Joseph Deegan, $1500.00. National Surety Corp.
26	See C 102/395 for orders (3) extending time of defendants to file bill of exceptions etc. to and including Oct. 1, 1940. Hulbert, J. 75

76 **Docket Entries.**

Docket C-102-395.

CRIMINAL DOCKET.

THE UNITED STATES

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, WILLIAM DEVERY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS CLARKE, THOMAS KEHOE, MICHAEL MURTAGH, J. NOONAN, FRANKIE "DOE", CHARLES HOROWITZ, A. SLACTA, "JOHN DOE", "JOHN" ACKALITIS, GEORGE BAGLEY, JOSEPH BOLTON, JOSEPH
77 BENDER, JOHN BROWN, MICHAEL CAHILL, HARRY CASEY, JOHN CELECIA, JOSEPH DEEGAN, VINCENT DEL DUCA, HENRY DELGADO, JOSEPH DEVLIN, ROBERT DILLON, FRANK DOWNS, JOSEPH DUFFY, JAMES FITZGERALD, J. FLANAGAN, EDWARD FRANZ, JOHN GAUGHAN, FRED HARRIS, FRANCIS J. HEARN, JOHN HORAN, ANDY JAKAKAS, HARRY JARVIS, SAM JONES, M. KATZ, ABRAHAM KLENOFSKY, alias "RED KLEIN", LEONARD LA MARNE, "JOHN" LACEY, LOUIS LA ROSE, alias "LOUIS LA ROSA", CARL MACOMBER, MANUEL MAGAN, THOMAS MOLLOY, "MOSELY" MULQUEEN, JOSEPH MURPHY, GEORGE NEEDELMAN, JOHN NICOLELLIS, GEORGE O'NEIL, WILLIAM PELKER, ELY POLLOCK, "FRENCHIE" POWERS, MURRELL PROCTOR, BERNARD L. RANDAZZO, GEORGE REGAN, SAMUEL REICHLER, MORRIS REICHLER, "HARROW ROE", "RICHARD ROE", RICHARD SAVAGE, EMIL
78 SCHWARZ, EMANUEL SCHWARTZ, THOMAS SHARKEY, WILLIAM SIMPSON, FRANCIS SINCLAIR, FRANK STOLOWITZ, DAVID TELFER, TONY VENDITTI, PETER WASKIEWICZ, FRANK WEICK, EDWARD WEINHEIMER, JOHN WEINHEIMER, FRANK WEST, THOMAS L. HICKEY.

Violation of Anti-Racketeering Act.

(Deposits on Page 501.)

See C 102/394 for bail of all defendants arraigned.

Also recognizances filed.

Date	*Proceedings*
1938	
May 31	Filed indictment.
31	Bench warrants ordered.
June 7	See C 102-394 for notice of appearance filed, Charles P. Rice, atty. for William Campbell and Austin Furey.
7	See C 102-394 for notice of appearance filed by James D. C. Murray, atty. for Joseph Ackalitis et al.
7	See C 102-394 for notice of appearance filed by Harold F. Berg, atty. for Thomas Hickey and Thomas Clarke.
7	See C 102-394 for notice of appearance for William Devery, Sam Brennan, John Flaherty, Thomas Kehoe and Local 807 by Edward C. Maguire, atty. 80
7	Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America pleads not guilty by William Devery, President.
7	William Devery pleads not guilty.
7	Thomas L. Hickey pleads not guilty.
7	John Flaherty pleads not guilty.
7	William Campbell pleads not guilty.
7	Austin Furey pleads not guilty.
7	Thomas Clarke pleads not guilty.
7	Thomas Kehoe pleads not guilty. 81
7	J. Noonan, correct name Corneuius J. Noonan, pleads not guilty.
7	"John" Ackalitis, correct name Joseph Ackalitis, pleads not guilty.
7	George Bagley pleads not guilty.
7	Joseph Bolton pleads not guilty.
7	Joseph Bender pleads not guilty.
7	John Celecia pleads not guilty.

Date.		*Proceedings.*
1938		
June	7	Henry Delgado pleads not guilty.
	7	Robert Dillon pleads not guilty.
	7	Frank Downs pleads not guilty.
	7	Joseph Duffy pleads not guilty.
	7	James Fitzgerald pleads not guilty.
	7	J. Flanagan, correct name James Flanagan, pleads not guilty.
	7	Fred Harris pleads not guilty.
	7	John Horan pleads not guilty.
	7	Andy Jakakas pleads not guilty.
83	7	Harry Jarvis pleads not guilty.
	7	M. Katz, correct name Max Katz, pleads not guilty.
	7	Abraham Klenofsky pleads not guilty.
	7	Leonard La Marne pleads not guilty.
	7	Manuel Magan pleads not guilty.
	7	Thomas Molloy pleads not guilty.
	7	George Needelman pleads not guilty.
	7	John Nicolellis pleads not guilty.
	7	George O'Neil pleads not guilty.
	7	Eli Pollock pleads not guilty.
	7	"Frenchie" Powers, correct name Francis Powers, pleads not guilty.
	7	Bernard L. Randazzo pleads not guilty.
	7	George Regan pleads not guilty.
84	7	Richard Savage pleads not guilty.
	7	Thomas Sharkey pleads not guilty.
	7	William Simpson pleads not guilty.
	7	Francis Sinclair pleads not guilty.
	7	Frank Stolowitz, correct name George Stolowitz, pleads not guilty.
	7	Tony Venditti pleads not guilty.
	7	Peter Waskiewicz pleads not guilty.
	7	Edward Weinheimer pleads not guilty.

Date 1938		*Proceedings*
June	7	John Weinheimer pleads not guilty.
	7	Frank West pleads not guilty.
	7	Defendants allowed 15 days to make motions.
	7	Defendants to be fingerprinted as a condition of bail. Leibell, J.
	9	Samuel Brennan pleads not guilty.
	9	Michael Cahill pleads not guilty.
	9	Joseph Deegan pleads not guilty.
	9	Joseph Devlin pleads not guilty.
	9	Edward Franz pleads not guilty.
	9	Francis J. Hearns, correct name Francis J. Henn, pleads not guilty. 86
	9	Carl Macomber, correct name Carrol Macomber, pleads not guilty.
	9	"Mosley" Mulqueen, correct name Michael Mulqueen, pleads not guilty.
	9	William Pelker pleads not guilty.
	9	Murrell Proctor pleads not guilty.
	9	Morris Reichler pleads not guilty.
	9	Emil Schwarz pleads not guilty.
	9	Emanuel Schwartz pleads not guilty.
	9	Frank Weick pleads not guilty.
	9	Michael Murtagh pleads not guilty.
	9	A. Slacta, correct name Alex Slacta, pleads not guilty. Paroled in custody of A. J. Graziano, atty. Defendants to be fingerprinted as a condition of bail. Leibell, J. 87
	9	Samuel Reichler pleads not guilty.
	9	See C 102-394 for Notice of Appearance filed by Anthony J. Graziano, Esq., atty. for Alex Slacta.
	13	Joseph Murphy, true name James Murphy, pleads not guilty.

88 *Docket Entries No. 102-395.*

Date	*Proceedings*
1938	
June 20	Harry Casey pleads not guilty. Bail $1500 to cover C 102-394. Paroled to give bail. Leibell, J.
22	Filed affidavit & order to show cause why indictment should not be dismissed as to Cornelius J. Noonan, also Demurrer (see C 102/394 for papers).
22	Motion argued. Decision reserved. Leibell, J.
22	Filed Demurrer as to Joseph Ackalitis, George Bagley et al. (see C 102/394 for papers).
89 22	Filed notice of hearing and argument on Demurrer as to Joseph Ackalitis, George Bagley et al. (see C 102/394 for papers).
22	Motion argued. Decision reserved. Leibell, J.
22	Filed affidavit & order to show cause why indictment should not be dismissed as to Michael Murtagh, also Demurrer (see C 102/394 for papers).
22	Motion argued. Decision reserved. Leibell, J.
22	Filed Demurrer as to Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America et al.
22	Filed notice of hearing and argument on Demurrer as to Local #807, etc., et al.
90 22	Motion argued. Decision reserved. Leibell, J. (overruled 7/28/38).
23	See C 102/394 for bench warrants (63) filed.
28	Filed amended Demurrer as to Joseph Ackalitis et al. (see C 102/394 for papers).
July 5	See C 102-394 for stipulation filed extending Govt's. time to file briefs in opposition to defts'. demurrers to July 13, 1938, & extending defts'. time to file reply briefs to July 20, 1938. So ordered. Lebell, J.

Date		*Proceedings*
1938		
July	7	Louis La Rosa. Bail $2500 } To cover 103/394.
	7	John Gaughan $1500 }
		Paroled until 4 P. M. in custody of their atty. to give bail. Knox, J.
	7	Filed demurrer as to Louis La Rosa & John Gaughan. Referred to Leibell, J. Knox, J.
	29	See C 102-394 for opinion #11,599 filed overruling demurrers. Leibell, J.
Sept.	26	Filed order overruling demurrer. Leibell, J.
Oct.	14	
Oct.	25	Filed affidavit and notice of motion for a bill of particulars (motion by Rice & Maguire, attys.). Motion denied. Knox, J. 92
	25	Filed affidavit and notice of motion for a bill of particulars (motion by Louis Mishell, atty.). Motion denied. Knox, J.
	25	Filed affidavit and notice of motion for a bill of particulars (motion by James D. C. Murray, atty.). Motion denied. Knox, J.
	25	Filed copy stipulation that defendants' motions herein for bills of particulars be made applicable in all respects to indictment C #102-394, and that the decision of Judge Knox on said motions be denied, also any adjudication of identical motions made as to C 102/394.
1939		93
Apr.	26	Sam Jones pleads not guilty. Bail $1500 to cover this indictment and C 102/394. Paroled to 4 P. M. to give bail. Deft. ordered fingerprinted. Mandelbaum, J.
1940		
Mar.	28	Harry Zollinger, indicted as Richard Roe, pleads not guilty. See C 102-394 for bail. Mandelbaum, J.

94 *Docket Entries No. 102-395.*

Date 1940	*Proceedings*
Apr. 2	Filed stipulation that James D. C. Murray be substituted for Burton R. Wheeler as attorney for William Campbell & Austin Furey.
22	Filed recognizance, Vincent Del Duca, $1500 . Nat'l Surety Corpn.
15	Before Murray Hulbert, J., Room 110. Trial begun. Gov't moves to sever trial as to defendants named in Indictments C 102-394 and C 102-395 granted as to defts. called for trial, with exception of defts. Flaherty, Brennan, Devery, Hickey and Clarke. Gov't motion to dismiss as to these 5 defendants granted. Gov't moves to consolidate Indictments C 102-394 and C 102-395 for trial of remaining defts. severed and called for trial granted. Exceptions.
95	
16	Trial continued. Opening statements made by counsel.
17	Trial continued.
18	Trial continued. Deft. David J. Telfer pleads not guilty to both indictments. Bail fixed at $5000 to cover both C 102-394 and C 102-395. Remanded.
18	Trial continued.
22	Trial continued. Deft. Vincent Del Duca pleads not guilty to both indictments. Bail $1,500 to cover both Indictments C 102-394 and C 102-395. Remanded. Bail of deft. David J. Telfer reduced to $2,500 to cover both indictments, with consent of Gov't. Remand amended.
96	
23	Trial continued. (Murray Hulbert, J.)
24	Trial continued.
25	Trial continued.

Docket Entries No. 102-395. 97

Date		*Proceedings*	
1940			
Apr.	26	Trial continued.	
	29	Trial continued.	
	30	Trial continued.	
May	1	Trial continued.	
	2	Trial continued.	
	3	Trial continued. Defendants' motion for withdrawal of a juror and granting of a mistrial. Denied. Exception. Jury polled.	
	6	Trial continued.	
	7	Trial continued. Motion made by National Surety Corp. to surrender deft. Austin Furey. Decision reserved. Deft. remanded. Motion granted. Bail $15,000 to cover both Indictments C 102-394 and C 102-395 may be rewritten by an acceptable surety.	98
	8	Trial continued.	
	9	Trial continued. Gov't rests and moves to dismiss both Indictments C 102-394 and C 102-395 as to defendants Flanagan, Mulqueen, Pelker, Duffy, Powers and Pollock. Granted. Defts. discharged from bail. Motion of Mr. Duff, of counsel, to dismiss both indictments as to deft. Noonan granted, with consent of Gov't. Bail discharged.	
	10	Trial continued. Gov't motion to dismiss both indictments as to deft. Carl Macomber granted. Bail discharged. Mr. McGuire moves to dismiss as to all defts. on both indictments. Decision reserved. Mr. Boudin moves to dismiss as to all defts. on both indictments. Decision reserved. Mr. Boudin moves separately to dismiss as to deft. Cahill. Decision reserved.	99
	13	Trial continued. Deft. Stolowitz ill and not present. Adjourned to May 14, 1940.	

100 *Docket Entries No. 102-395.*

Date	*Proceedings*
1940	
May 14	Trial continued. Gov't motion to sever as to deft. Stolowitz granted. Bail continued. All motions of defts. to dismiss, heretofore made, on which decision was reserved, denied, exceptions. Motion of Mr. Murray for withdrawal of a juror and granting of a mistrial denied. Exception.
15	Trial continued.
17	Trial continued.
20	Trial continued. Gov't rests. All defts. rest.
101	Gov't motion to dismiss as to deft. Katz granted. All motions heretofore made at close of Gov't case and denied and renewed at close of entire case and all individual motions made are denied. Exceptions.
22	Trial continued. Summations made by Mr. Murray, Mr. Boudin, Mr. McGuire and Mr. Cahill.
23	Trial continued. Jury charged. Deputy Marshal sworn and jury retired. Alternate Jurors 13 and 14 excused.
24	Trial continued. Jury returned a verdict of guilty as to all defendants, as follows:
	Local 807, etc., William Campbell, Robert Dillon, Frank Downs, Austin Furey, Abraham
102	Klenofsky, George Needleman, Bernard L. Randazzo, Samuel Reichler, William Simpson, Tony Venditte and Edward Weinheimer: Guilty on all counts of both indictments. (C 102-394 and C 102-395.)
	George Bagley, Joseph Bender, Michael Cahill, John Gaughan, Manuel Magan & James Murphy: Guilty on count of Indictment C 102-394 and on Counts 1 and 2 of Indictment C 102-395 and Not Guilty on Counts 3 and 4 of Indictment C 102-395.

Docket Entries No. 102-395. 103

Date 1940	*Proceedings*	
May 24	Joseph Deegan, John Horan, Andy Jakakas, Leonard La Marne, Morris Reichler, Thomas Sharkey, Peter Waskiewicz, John Weinheimer and Harry Zollinger: Guilty on count of Indictment C 102-394 and on Counts 1 and 2 of Indictment C 102-395 and Not Guilty on Counts 3 and 4 of Indictment C 102-395. Jury recommends leniency as to defts. Deegan, Jakakas, Morris Reichler, Sharkey, Waskiewicz and John Weinheimer.	
	Jury polled as to defts. Local 807, etc., Bagley, Bender and Cahill.	104
	All motions re verdict continued to May 28, 1940, at 10:30 A. M. in Room 110. All bail continued.	
	Sentences adjourned to June 7th, 1940, in Room 706.	
28	Before Hulbert, J. Motions re verdict argued. Mr. Boudin moves to set verdict aside and for an arrest of judgment. Argued. Decision reserved. Joined in by all defts. Briefs to be exchanged and submitted by June 6, 1940.	
June 7	Before Hulbert, J. Sentences adjourned to June 13th, 1940, @ 10 A. M., in Room 706. Awaiting reports of Probation Officer. Mr. Boudin moves to dismiss Indictment C 102-395 and to set verdict aside and for arrest of judgment on the ground of unconstitutionality. Decision reserved. Memo. to be submitted by Mr. Boudin only.	105
13	Sentences adjourned to June 19, 1940, same time & place.	
19	Sentences imposed on defendants. (Hulbert, J.) (Filed recognizance, Robert Dillon,	

106 *Docket Entries No. 102-395.*

Date 1940	*Proceedings*
	$3500, to cover C 102/394 & 395.) Nat'l Surety Corpn., surety.
June 19	Defendants sentenced as follows on Indictment C 102-394:
	Local 807 of Int. Br. of Teamsters, etc., fined $2,000. Judgment #40440.
	George Bagley, 3 months.
	Joseph Bender, 6 months.
	Michael Cahill, 3 months.
	William Campbell, 1 year, to run concurrently with Counts 2, 3 & 4 of Indictment C 102-395
107	and consecutive to sentence on Count 1 of Indictment C 102-395 and suspended.
	Joseph Deegan, 1 month.
	Robert Dillon, 1 year, to run concurrently with Counts 2, 3 & 4 of Indictment C 102-395 and consecutive to sentence on Count 1 of Indictment C 102-395 and suspended.
	Frank Downs, 1 year.
	Austin Furey, 1 year, to run concurrently with Counts 2, 3 & 4 of Indictment C 102-395 and consecutive to sentence on Count 1 of Indictment C 102-395 and suspended.
	John Gaughan, 1 month.
	John Horan, 3 months.
108	Andy Jakakas, 6 months.
	Abraham Klenofsky, 6 months.
	Leonard La Marne, 3 months.
	Manuel Magan, 1 year.
	James Murphy, 3 months.
	George Needelman, 1 year, to run concurrently with Counts 2, 3 & 4 of Indictment C 102-395 and consecutive to sentence on Count 1 of Indictment C 102-395 and suspended.

Date	*Proceedings*
1940	
June 19	Bernard L. Randazzo, 3 months.
	Samuel Reichler, 6 months.
	Morris Reichler, 1 year.
	Thomas Sharkey, one month.
	William Simpson, two months.
	Tony Venditti, two months.
	Peter Waskiewicz, 1 year.
	Edward Weinheimer, 1 year, to run concurrently with Counts 2, 3 & 4 of Indictment C 102-395 and consecutive to sentence on Count 1 of Indictment C 102-395 and suspended.
	110
	John Weinheimer, 6 months.
	Harry Zollinger, 7 months.
	All defendants to surrender June 26th, 1940. Bail continued.
	Defendants sentenced as follows on Indictment C 102-395:
	Local 807 of Int. Br. of Teamsters, etc., fined $2000 on each of Counts 1, 2, 3 and 4. Judgment #40441.
	George Bagley, 1 year on each of Counts 1 & 2, to run concurrently and suspended.
	Joseph Bender, 1 year on each of Counts 1 & 2, to run concurrently and suspended.
	Michael Cahill, 1 year on each of Counts 1 & 2, to run concurrently and suspended.
	111
	William Campbell, 2 years on Count 1, in a penitentiary, etc. 1 year on each of Counts 2, 3 & 4, to run concurrently with each other and with sentence on Indictment C 102-394 and suspended.
	Joseph Deegan, 1 year on Count 1 and suspended.
	Robert Dillon, 1 year & 1 day on Count 1 in a penitentiary, etc., 1 year on each of Counts 2,

112 *Docket Entries No. 102-395.*

Date	*Proceedings*
1940	
	3 & 4, to run concurrently with each other and suspended.
June 19	Frank Downs, 1 year on each of Counts 1, 2, 3 & 4 to run concurrently and suspended.
	Austin Furey, 2 years on Count 1 in a penitentiary, etc. 1 year on each of Counts 2, 3 & 4, to run concurrently with each other and with sentence on Indictment C 102-394 and suspended.
	John Gaughan, 1 year on each of Counts 1 & 2,
113	to run concurrently and suspended.
	John Horan, 1 year on Count 1 and suspended.
	Andy Jakakas, 1 year on Count 1 and suspended.
	Abraham Klenofsky, 1 year on each of Counts 1, 2, 3 & 4 and suspended.
	Leonard La Marne, 1 year on Count 1 and suspended.
	Manuel Magan, 1 year on each of Counts 1 & 2 to run concurrently with each other and with sentence on Indictment C 102-394, all suspended.
	James Murphy, 1 year on each of Counts 1 & 2, to run concurrently and suspended.
	George Needelman, 1 year & one day on Count 1 in a penitentiary, etc. 1 year on each of
114	Counts 2, 3 & 4, to run concurrently with each other and with sentence on Indictment C 102-394 and suspended.
	Bernard L. Randazzo, 1 year on each of Counts 1, 2, 3 & 4, to run concurrently and suspended.
	Samuel Reichler, 1 year on each of Counts 1, 2, 3 & 4, to run concurrently and suspended.
	Morris Reichler, 1 year on Count 1, to run concurrent with sentence on Indictment C 102-394, both suspended.

Date.	*Proceedings*	
1940		
June 19	Thomas Sharkey, 1 year on Count 1 and suspended.	
	William Simpson, 1 year on each of Counts 1, 2, 3 & 4, to run concurrently and suspended.	
	Tony Venditti, 1 year on each of Counts 1-2-3 & 4 to run concurrently and suspended.	
	Peter Waskiewicz, 1 year on Count 1 to run concurrently with sentence on Indictment C 102-394, both suspended.	
	Edward Weinheimer, 18 months on Count 1 in a penitentiary, etc. 1 year on each of Counts 2, 3 & 4, to run concurrently with each other and with sentence on Indictment C 102-394, and consecutive to sentence on Count 1 and suspended.	116
	John Weinheimer, 1 year on Count 1 and suspended.	
	Harry Zollinger, 1 year on Count 1 and suspended.	
	Defendants placed on probation for period of three years, to begin at termination of prison sentences, subject to the standing Probation Order of this Court.	
	Sentences of all defendants to one year and less are to be served at the Federal House of Detention, New York City, N. Y.	117
	Bail of defendant Robert Dillon increased to and fixed at $3,500 pending surrender.	
	Filed 27 Judgments.	
24	Filed notice of appeal and grounds of appeal of Local 807 of International Brotherhood of Teamsters, etc.; clerk's fees, $5.00.	
24	Filed notice of appeal and grounds of appeal of Michael Cahill; clerk's fees, $5.00.	

18 *Docket Entries No. 102-395.*

Date 1940	*Proceedings*
June 24	Filed notice of appeal and grounds of appeal of William Campbell, Austin Furey, George Bagley, Joseph Bender, Joseph Deegan, Robert Dillon, Frank Downs, John Gaughan, John Horan, Andy Jakakas, Abraham Klenofsky, Leonard La Marne, Manuel Magan, James Murphy, George Needlemann, Bernard L. Randazzo, Samuel Reichler, Morris Reichler, Thomas Sharkey, William Simpson, Tony Venditti, Peter Waskiewicz, Edward Weinheimer, John Weinheimer and Harry Zollinger; clerk's fees, $5.00.
19 26	See C 102/394 for bail as to each defendant pending appeal.
26	Filed amended judgment. Sentence of Frank Downs, dated June 19, 1940, reduced to four months. Detention Hdqters., N. Y. C.
26	Filed order extending time of Michael Cahill to settle & file bill of exceptions, etc., to and including Oct. 1, 1940. Hulbert, J.
26	Filed order extending time of defts. Wm. Campbell, A. Furey, G. Bagley, J. Bender, J. Deegan, R. Dillon, F. Downs, J. Gaughan, J. Horan, A. Jakakas, A. Klenofsky, L. La Marne, M. Magan, J. Murphy, G. Needelmann; B. L. Randazzo, S. Reichler, M. Reichler, T. Sharkey, Wm. Simpson, T. Venditti, P. Waskiewicz, E. Weinheimer, J. Weinheimer, H. Zollinger to settle & file bill of exceptions, etc., to and including Oct. 1, 1940. Hulbert, J.
20 26	Filed order extending time of Local 807 of Int'l Bro. of Teamsters, Chauffeurs, Stablemen & Helpers of America to settle & file bill of exceptions, etc., to & including Oct. 1, 1940; clerk's fees, $15.00. Hulbert, J.

Indictment No. C-102-394. 121

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

FILE NO. 102-394

MARCH TERM IN THE YEAR 1938

SOUTHERN DISTRICT OF NEW YORK, ss.:

The grand jurors of the United States of America duly 122
impaneled and sworn in the District Court of the United States for the Southern District of New York at the March 1938 Term of said Court, and inquiring for the said district upon their oaths present that:

INTERSTATE COMMERCE

I. For many years last past up to and including the date of the filing of this indictment, a substantial part of the trade and commerce among the several states of the United States has consisted in the transportation and shipment by so-called over-the-road or interstate motor trucks of general merchandise and food-stuffs, hereinafter collectively referred to as "merchandise," from the states among other of Massachusetts, Connecticut, New Jersey, 123
Pennsylvania, Delaware, North Carolina and Virginia to and into the State and Southern District of New York and from the State and Southern District of New York to and into other states including said states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia, which said trade and commerce is now hereinafter described in further detail that is to say:

124 *Indictment No. 102-394.*

II. During said period of time a large number of persons, firms and corporations known to the trade and hereinafter referred to as "shippers" have been engaged in making contracts and arrangements with persons, firms and corporations known to the trade and hereinafter referred to as "consignees" either for the sale of said merchandise to said consignees or for the receipt and sale of said merchandise by said consignees for the account of said shippers. Pursuant to said contracts and arrangements said shippers have shipped and transported or have caused the transportation and shipment of said merchandise by said over-the-road motor trucks from the aforesaid
125 states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia into other states including the State of New York to consignees located therein; and thereafter such over-the-road motor trucks have picked up merchandise for their return trips from shippers located within the City, County and State of New York and have transported the same to consignees located in the aforesaid States of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia. In the ordinary course of said trade and commerce said over-the-road motor trucks have been either owned by said shippers or by them hired from persons, firms or corporations engaged in the business of owning and operating such over-the-road motor trucks in said states other than the State of New York and have
126 been operated by one or more employees of their respective owners who have driven said trucks loaded with said merchandise from the places of business of said shippers in said states other than the State of New York to the respective places of business of said consignees located within the City, County and State of New York; thence in some instances to the places of business of shippers located within the City, County and State of New York where merchandise for the return trips has been picked

up and thence to the respective places of business of consignees located in states other than the State of New York and including the aforesaid states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia.

III. Throughout the period above described there has been a constant and continuous flow of shipments by said over-the-road motor trucks of said merchandise in commerce among the several states from the states, among others, of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia to and into the State of New York and from the State of New York to and into the said states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Caroline and Virginia and so through the aforesaid channels of trade from shippers to consignees, the value of the merchandise so shipped being in excess of One Billion (1,000,000,000) Dollars annually. 123

IV. The said shippers and consignees are so numerous that it is impracticable to set forth their names herein and the names of many of said shippers and consignees are to the grand jurors unknown.

DESCRIPTION OF DEFENDANTS

V. Whenever in this indictment any person is described by means of an initial or a name other than his true name, as indicated by quotation marks, such true name is to the grand jurors unknown. 125

VI. At all times hereinafter mentioned LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, sometimes hereinafter referred to as "defendant union," has been a national association under the laws of the State of New York, having its principal place of buisness at No. 74 Varick Street.

New York City, New York, and including in its membership approximately 90% of all persons employed as drivers or helpers on motor trucks transporting general merchandise and food-stuffs within the City, County and State of New York.

VII. At all times hereinafter mentioned, WILLIAM DEVERY has been president of defendant union.

VIII. At all times hereinafter mentioned THOMAS L. HICKEY and SAMUEL BRENNAN have been secretary and treasurer and recording secretary respectively of defendant union.

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IX. At all times hereinafter mentioned JOHN FLAHERTY has been a trustee of defendant union.

X. At all times hereinafter mentioned WILLIAM CAMPBELL, AUSTIN FUREY and THOMAS CLARKE have been the duly authorized delegates or business representatives of defendant union.

XI. From time to time during the period hereinafter mentioned THOMAS KEHOE has been a duly authorized delegate, business representative or member of defendant union.

XII. At all times hereinafter mentioned MICHAEL
132 MURTAGH, J. NOONAN, FRANKIE "DOE", CHARLES HOROWITZ, A. SLACTA and "JOHN DOE" have been individuals residing in the State of New York.

XIII. At all times hereinafter mentioned the following named individuals have been members of the defendant union: "JOHN" ACKALITIS; GEORGE BAGLEY; JOSEPH BOLTON; JOSEPH BENDER; JOHN BROWN; MICHAEL CAHILL; HARRY CASEY; JOHN CELECIA; JOSEPH DEEGAN; VINCENT

DEL DUCA; HENRY DELGADO; JOSEPH DEVLIN; ROBERT DILLON; FRANK DOWNS; JOSEPH DUFFY; JAMES FITZGERALD; J. FLANAGAN; EDWARD FRANZ; JOHN GAUGHAN; FRED HARRIS; FRANCIS J. HEARN; JOHN HORAN; ANDY JAKAKAS; HARRY JARVIS; SAM JONES; M. KATZ; ABRAHAM KLENOFSKY, alias "RED KLEIN"; LEONARD LA MARNE; "JOHN" LACEY; LOUIS LAROSE, alias "LOUIS LA ROSA"; CARL MACOMBER; MANUEL MAGAN; THOMAS MOLLOY; "MOSELY" MULQUEEN; JAMES MURPHY; GEORGE NEEDELMAN; JOHN NICOLELLIS; GEORGE O'NEIL; WILLIAM PELKER; ELI POLLOCK; "FRENCHIE" POWERS; MURRELL PROCTOR; BERNARD L. RANDAZZO; GEORGE REGAN; SAMUEL REICHLER; MORRIS REICHLER; "HARROW ROE"; "RICHARD ROE"; RICHARD SAVAGE; EMIL SCHWARZ; EMANUEL SCHWARTZ; THOMAS SHARLEY; WILLIAM SIMPSON; FRANCIS SINCLAIR; FRANK STOLOWITZ; DAVID TELFER; TONY VENDITTI; PETER WASKIEWICZ; FRANK WEICK; EDWARD WEINHEIMER; JOHN WEINHEIMER; FRANK WEST. 134

XIV. LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY; THOMAS L. HICKEY; SAMUEL BRENNAN; JOHN FLAHERTY; WILLIAM CAMPBELL; AUSTIN FUREY; THOMAS CLARKE; THOMAS KEHOE; MICHAEL MURTAGH; J. NOONAN; FRANKIE "DOE"; CHARLES HOROWITZ; A. SLACTA; "JOHN DOE"; "JOHN" ACKALITIS; GEORGE BAGLEY; JOSEPH BOLTON; JOSEPH BENDER; JOHN BROWN; MICHAEL CAHILL; HENRY CASEY; JOHN CELECIA; 135
JOSEPH DEEGAN; VINCENT DEL DUCA; HENRY DELGADO; JOSEPH DEVLIN; ROBERT DILLON; FRANK DOWNS; JOSEPH DUFFY; JAMES FITZGERALD; J. FLANAGAN; EDWARD FRANZ; JOHN GAUGHAN; FRED HARRIS; FRANCIS J. HEARN; JOHN HORAN; ANDY JAKAKAS; HARRY JARVIS; SAM JONES; M. KATZ; ABRAHAM KLENOFSKY, alias "RED KLEIN"; LEONARD LA MARNE; "JOHN" LACEY; LOUIS LA ROSE, alias "LOUIS LA ROSA"; CARL MACOMBER; MANUEL MAGAN;

THOMAS MOLLOY; "MOSELY" MULQUEEN; JOSEPH MURPHY; GEORGE NEEDELMAN; JOHN NICOLELLIS; GEORGE O'NEIL; WILLIAM PELKER; ELI POLLOCK; "FRENCHIE" POWERS; MURRELL PROCTOR; BERNARD L. RANDAZZO; GEORGE REGAN; SAMUEL REICHLER; MORRIS REICHLER; "HARROW ROE"; "RICHARD ROE"; RICHARD SAVAGE; EMIL SCHWARZ; EMANUEL SCHWARTZ; THOMAS SHARKEY; WILLIAM SIMPSON; FRANCIS SINCLAIR; FRANK STOLOWITZ; DAVID TELFER; TONY VENDITTI; PETER WASKIEWICZ; FRANK WEICK; EDWARD WEINHEIMER; JOHN WEINHEIMER; FRANK WEST, are hereby made defendants to this indictment and to each and every count thereof.

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CONSPIRACY

XV. Beginning on or about December 1, 1936, and continuously thereafter up to and including the date of the filing of this indictment and in the manner and by the means set forth in sub-divisions (a) to (m) inclusive of Paragraph XIX hereof within the Southern District of New York, the defendants named in Paragraph 14 of this indictment, together with divers other persons to the grand jurors unknown, said defendants and others being hereinafter sometimes referred to as "conspirators" in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" (26 Stat. 209) commonly known as the Sherman Anti-Trust Act, have engaged in a combi-
138 nation and conspiracy to restrain the aforesaid interstate trade and commerce which, throughout the period of time hereinbefore mentioned, unlawfully has restrained and which now is in restraint of said trade and commerce as follows:

DESCRIPTION OF CONSPIRACY

XVI. It has been a part of said conspiracy that the said interstate trade and commerce in said merchandise should

be interfered with in the manner and by the means set forth in sub-divisions (a) to (m) inclusive of Paragraph XIX hereof in accordance with and pursuant to an understanding and agreement between said conspirators.

1. To impose, levy and collect from said shippers, owners and drivers of said over-the-road motor trucks or their helpers unreasonable and unwarranted charges amounting to the sum of Nine (9.42) Dollars and forty-two cents for each large truck and the sum of Eight (8.41) Dollars and forty-one cents for each small truck transporting merchandise as aforesaid from states other than the State of New York into the metropolitan area of New York; the said charges aggregating more than One Million (1,000,000) 140
Dollars annually;

2. To prevent, hinder and restrain shippers, owners and drivers of said over-the-road motor trucks and their helpers from transporting, delivering and unloading said merchandise at the places of business of the consignees to whom it has been shipped within the City, County and State of New York, and from picking up merchandise within the City, County and State of New York for the return trips of said trucks and from transporting or delivering the same to the consignees thereof in states other than the State of New York;

3. To prevent, hinder and restrain consignees within the City, County and State of New York from accepting delivery of said merchandise so transported to their respective 141
terminals or places of business from states other than the State of New York;

4. To coerce and to compel the drivers of said over-the-road motor trucks and their helpers to conduct said trucks to terminals owned, operated or controlled by said shippers or some of them or elsewhere within the City, County and State of New York and there to transfer, turn over and deliver said trucks and the merchandise contained

therein to members of the defendant union, or to some one or more of them, and to permit said members of defendant union exclusively thereafter to conduct said trucks and the merchandise contained therein to the places of business of the various consignees to whom it has been shipped within the City, County and State of New York and in all other respects to complete the transportation, delivery and unloading of said merchandise, and to pick up merchandise within the State of New York for the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals or elsewhere within the City, County and State of New York.

It has been a part of said conspiracy to adopt and enforce said practices against said shippers, consignees, owners and drivers of said trucks and their helpers entirely regardless of whether or not any services have been or are to be rendered therefor and entirely regardless of whether or not said drivers and their helpers have been or are members in good standing of a labor union in their respective states of origin. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that, in most instances, little or no service whatsoever has been rendered by conspirators or by any of them in consideration for said charges and that the drivers of said over-the-road motor trucks and their helpers not only have been members in good standing of a labor union in their respective states of origin but have been members in good standing of another local of the same international union of the American Federation of Labor with which the defendant union is affiliated, namely, International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in most instances the services, if any, rendered by members of defendant union have been of relatively short duration and of a negligent and careless

nature frequently resulting in substantial damage to the trucks, the merchandise contained therein and to the good will of the shippers' business.

XVII. It has further been a part of said conspiracy to coerce and to compel in the manner and by the means set forth in subdivisions (a) to (m) inclusive of Paragraph XIX hereof the various persons, firms and corporations owning, operating or controlling said over-the-road motor trucks as aforesaid to enter into contracts and arrangements with the defendant union providing for the employment or continued employment at unreasonable and excessive rates, prices or charges of an arbitrary and unwanted number of members of defendant union to conduct 146
said trucks and the merchandise contained therein from the said terminals or elsewhere within the City, County and State of New York to the places of business of the various consignees to whom it has been shipped as aforesaid, and in all other respects to complete the transportation, delivery and unloading of said merchandise and to pick up merchandise within the State of New York for the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals or elsewhere within the City, County and State of New York. In many instances the members of defendant union, whom shippers have been compelled or coerced to employ or to keep employed, as aforesaid, have been individuals of bad repute who have had little or no experience in driving 147
trucks, or who are otherwise incompetent and irresponsible. The said services of said members of defendant union not only have been unsolicited and unwanted, but have been neither necessary nor useful to said shippers or to said persons, firms and corporations owning, operating or controlling said trucks or to said consignees since all of such transportation, loading, unloading and delivery could as well have been performed by the drivers of said over-the-

road motor trucks and their helpers were it not for the fact that they have been prevented from making such deliveries as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that prior to on or about December 1, 1936, all of said services in fact were performed and would continue to be so performed by the drivers of said over-the-road motor trucks and their helpers were it not for the interference and restraints imposed upon them by the conspirators as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said drivers of said over-the-road motor trucks and their helpers are necessarily obliged to remain
149 idle and inactive during the entire period of time required for the completion of the transportation, delivery, unloading and pick-ups of said merchandise by the members of defendant union as aforesaid. Unless the said practice, terms and conditions imposed by said conspirators as aforesaid are accepted by said shippers, drivers of over-the-road motor trucks and their helpers and consignees, they and each of them are prevented, hindered and restrained by the said conspirators from selling, transporting, delivering or receiving said merchandise in interstate commerce and from otherwise engaging in said interstate commerce in said merchandise. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that by reason of the foregoing practices and the attendant charges and levies; many of said shippers and of said per-
150 sons, firms and corporations owning, operating or controlling said over-the-road motor trucks as aforesaid have been unable to conduct their respective businesses at a profit and have been obliged entirely to discontinue their transportation by motor truck to and from the State of New York. The said rates, prices or charges so paid to said members of defendant union as aforesaid, have been added to the prices charged for said merchandise to the ultimate

consumers thereof and thereby have constituted an unreasonable burden upon said interstate trade and commerce in said merchandise.

XVIII. It has further been a part of said conspiracy that if any of said shippers or of said persons, firms or corporations owning, operating or controlling said over-the-road motor trucks as aforesaid, should refuse either to pay the charges hereinbefore described, or to employ an arbitrary number of members of defendant union to conduct said over-the-road motor trucks from said terminals to the various places of business of the consignees to whom the merchandise has been shipped within the City, County and State of New York, and in all other respects to complete the transportation and delivery thereof and to pick up merchandise within the State of New York for the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals within the City, County and State of New York, or to abide by any of the terms and conditions dictated, fixed and agreed upon by the conspirators as aforesaid, then and in any of said events the conspirators concertedly, in the manner and by the means set forth in sub-divisions (a) to (m) inclusive of Paragraph XIX hereof, should refuse to permit said shippers, drivers of over-the-road motor trucks or their helpers, and consignees to sell, transport, load, unload, deliver or receive any merchandise including said merchandise purchased by said consignees from said shippers as aforesaid. 152 153

MEANS OF EFFECTUATING CONSPIRACY

XIX. It has further been a part of said conspiracy that the conspirators in order to carry out the objects set forth in the foregoing Paragraph XVI to XVIII hereof, and so to carry out the restraint of trade and commerce among the several states as aforesaid, should employ and the con-

spirators pursuant to such conspiracy in fact have employed divers means and methods including among others:

(a) Employing persons known to the conspirators and to persons engaged in the trucking business generally as "gangsters" and "gorillas" for the purpose of carrying out the means and methods hereinafter described and particularly for the purpose of intimidating, threatening, assaulting and beating up persons owning, operating or controlling said over-the-road motor trucks, their drivers and helpers;

(b) Attempting to create or creating throughout the
155 industry described in this indictment generally and in the minds of persons engaged therein, a feeling of fear and terror for the purpose of preventing persons from resisting the operation of the combination and conspiracy described herein;

(c) Threatening physical violence against shippers or persons owning, operating, driving or controlling over-the-road motor trucks or their respective employees;

(d) Forcibly detaining or damaging or threatening to detain or damage over-the-road motor trucks engaged in conveying merchandise from shippers to consignees or others; or forcibly detaining or damaging or threatening to obtain or damage the merchandise contained in said trucks;

156 (e) Assaulting drivers of over-the-road motor trucks or their helpers;

(f) Forcibly preventing or obstructing deliveries of merchandise to consignees and pick-ups of merchandise for the return trips of over-the-road motor trucks;

(g) Following and spying upon over-the-road motor trucks, their drivers and helpers;

(h) Using threats, violence, boycotts, refusals to load, pickets and other means to the grand jurors unknown to enforce the payments of money;

(i) Coercing shippers and persons, firms or corporations owning, operating or controlling over-the-road motor trucks to employ and pay designated employees under the guise of union regulations;

(j) Refusing to load, unload, convey, deliver or handle merchandise;

(k) Assembling riotus and threatening gatherings near the places of business of consignees;

(l) Collecting money from persons, firms or corporations owning, operating or controlling over-the-road motor trucks or from other persons through the use of threats, intimidation, coercion or violence; 158

(m) And many other means and methods to the grand jurors unknown.

XX. The grand jurors aforesaid, upon their oaths aforesaid, do further present that the purpose, intent and effect of each of the acts of the conspirators hereinbefore described, has been to restrain the said interstate trade and commerce in said merchandise, to eliminate competition in the course thereof and to impose an unreasonable burden thereon, and that each of said acts has been in and of itself unreasonable, unwarranted and oppressive. 159

And so the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants above named at the time and place and in the manner and form aforesaid have conspired to restrain trade and commerce in over-the-road trucking among the several states of the United States against the peace and dignity of the United

160 *Indictment No. 102-394.*

States and contrary to the form of the statute of the United States in such case made and provided.

Dated, New York, May 31, 1938.

A true bill.

VERNON MUNROE, *Foreman.*

THURMAN ARNOLD,
Assistant Attorney General.

JOHN HARLAN AMEN,
161 *Special Assistant to the Attorney General.*

MOSES M. LEWIS,
Special Attorney.

LAMAR HARDY,
United States Attorney.

Indictment No. C-102-395.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

162

FILE NO. 102-395

MARCH TERM IN THE YEAR 1938
SOUTHERN DISTRICT OF NEW YORK, ss.:

FIRST COUNT

The grand jurors of the United States of America duly impaneled and sworn in the District Court of the United

States for the Southern District of New York at the March 1938 Term of said Court, and inquiring for the said district upon their oaths present that:

INTERSTATE TRADE AND COMMERCE.

I. For many years last past up to and including the date of the filing of this indictment, a substantial part of the trade and commerce among the several states of the United States has consisted in the transportation and shipment by so-called over-the-road or interstate motor trucks of general merchandise and food-stuffs, hereinafter collectively referred to as "merchandise," from the states among others of Massachusetts, Connecticut, New Jersey, 164
Pennsylvania, Delaware, North Carolina and Virginia to and into the State and Southern District of New York and from the State and Southern District of New York to and into other states including said states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia, which said trade and commerce is now hereinafter described in further detail that is to say:

II. During said period of time a large number of persons, firms and corporations known to the trade and hereinafter refefred to as "shippers" have been engaged in making contracts and arrangements with persons, firms and corporations known to the trade and hereinafter refererd to as "consignees" either for the sale of said merchandise to said consignees or for the receipt and sale of 165
said merchandise by said consignees for the account of said shippers. Pursuant to said contracts and arrangements said shippers have shipped and transported or have caused the transportation and shipment of said merchandise by said over-the-road motor trucks from the aforesaid states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia into other states including the State of New York to consignees

located therein; and thereafter such over-the-road motor trucks have picked up merchandise for their return trips from shippers located within the City, County and State of New York and have transported the same to consignees located in the aforesaid states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia. In the ordinary course of said trade and commerce said over-the-road motor trucks have been either owned by said shippers or by them hired from persons, firms or corporations engaged in the business of owning and operating such over-the-road motor trucks in said states other than the State of New York and have been
167 operated by one or more employees of their respective owners who have driven said trucks loaded with said merchandise from the places of business of said shippers in said states other than the State of New York to the respective places of business of said consignees located within the City, County and State of New York, thence in some instances to the places of business of shippers located within the City, County and State of New York where merchandise for the return trips has been picked up and thence to the respective places of business of consignees located in states other than the State of New York and including the aforesaid states of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia.

168 III. Throughout the period above described there has been a constant and continuous flow of shipments by said over-the-road motor trucks of said merchandise in commerce among the several states among others, of Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia and so through the aforesaid channels of trade from shippers to consignees the value of the merchandise so shipped being in excess of One Billion ($1,000,000,000) Dollars annually.

DESCRIPTION OF DEFENDANTS

IV. Whenever in this indictment any person is described by means of an initial or a name other than his true name, as indicated by quotation marks, such true name is to the grand jurors unknown.

V. At all times hereinafter mentioned LOCAL 807 of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMAN & HELPERS OF AMERICA, sometimes hereinafter referred to as "defendant union," has been a national association under the laws of the State of New York, having its principal place of business at No. 74 Varick Street, New York City, New York, and including 170
in its membership approximately 90% of all persons employed as drivers or helpers on motor trucks transporting general merchandise and food-stuffs within the City, County and State of New York.

VI. At all times hereinafter mentioned WILLIAM DEVERY has been president of defendant union.

VII. At all times hereinafter mentioned THOMAS L. HICKEY and SAMUEL BRENNAN have been secretary and treasurer and recording secretary respectively of defendant union.

VIII. At all times hereinafter mentioned JOHN FLAHERTY has been a trustee of defendant union. 171

IX. At all times hereinafter mentioned WILLIAM CAMPBELL, AUSTIN FUREY and THOMAS CLARKE have been the duly authorized delegates or business representatives of defendant union.

X. From time to time during the period hereinafter mentioned THOMAS KEHOE has been a duly authorized delegate, business representative or member of defendant union.

XI. At all times hereinafter mentioned MICHAEL MURTAGH, J. NOONAN, FRANKIE "DOE," CHARLES HOROWITZ, A. SLACTA and "JOHN DOE" have been individuals residing in the State of New York.

XII. At all times hereinafter mentioned the following named individuals have been members of the defendant union: "JOHN" ACKALITIS; GEORGE BAGLEY; JOSEPH BOLTON; JOSEPH BENDER; JOHN BROWN; MICHAEL CAHILL; HARRY CASEY; JOHN CELECIA; JOSEPH DEEGAN; VINCENT DEL DUCA; HENRY DELGADO; JOSEPH DEVLIN; ROBERT DILLON; FRANK DOWNS; JOSEPH DUFFY; JAMES FITZ-
173 GERALD; J. FLANAGAN; EDWARD FRANZ; JOHN GAUGHAN; FRED HARRIS; FRANCIS J. HEARN; JOHN HORAN; ANDY JAKAKAS; HARRY JARVIS; SAM JONES; M. KATZ; ABRAHAM KLENOFSKY, alias "RED KLEIN"; LEONARD LA MARNE; "JOHN" LACEY; LOUIS LA ROSE, alias "LOUIS LA ROSA"; CARL MACOMBER; MANUEL MAGAN; THOMAS MOLLOY; "MOSELY" MULQUEEN; JAMES MURPHY; GEORGE NEEDELMAN; JOHN NICOLELLIS; GEORGE O'NEIL; WILLIAM PELKER; ELI POLLOCK; "FRENCHIE" POWERS; MURRELL PROCTOR; BERNARD L. RANDAZZO; GEORGE REGAN; SAMUEL REICHLER; MORRIS REICHLER; "HARROW ROE"; "RICHARD ROE"; RICHARD SAVAGE; EMIL SCHWARZ; EMANUEL SCHWARTZ; THOMAS SHARKEY; WILLIAM SIMPSON; FRANCIS SINCLAIR; FRANK STOLOWITZ; DAVID TELFER; TONY VENDITTI; PETER WASKIEWICZ; FRANK WEICK; EDWARD
174 WEINHEIMER; JOHN WEINHEIMER; FRANK WEST.

XIII. LOCAL 807 of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY; THOMAS L. HICKEY; SAMUEL BRENNAN; JOHN FLAHERTY; WILLIAM CAMPBELL; AUSTIN FUREY; THOMAS CLARKE; THOMAS KEHOE; MICHAEL MURTAGH; J. NOONAN; FRANKIE "DOE"; CHARLES HOROWITZ; A. SLACTA; "JOHN DOE"; "JOHN" ACKALITIS;

GEORGE BAGLEY; JOSEPH BOLTON; JOSEPH BENDER; JOHN BROWN; MICHAEL CAHILL; HARRY CASEY; JOHN CELECIA; JOSEPH DEEGAN; VINCENT DEL DUCA; HENRY DELGADO; JOSEPH DEVLIN; ROBERT DILLON; FRANK DOWNS; JOSEPH DUFFY; JAMES FITZGERALD; J. FLANAGAN; EDWARD FRANZ; JOHN GAUGHAN; FRED HARRIS; FRANCIS J. HEARN; JOHN HORAN; ANDY JAKAKAS; HARRY JARVIS; SAM JONES; M. KATZ; ABRAHAM KLENOFSKY, alias "RED KLEIN"; LEONARD LA MARNE; "JOHN" LACEY; LOUIS LAROSE, alias "LOUIS LA ROSA"; CARL MACOMBER; MANUEL MAGAN; THOMAS MOLLOY; "MOSELY" MULQUEEN; JOSEPH MURPHY; GEORGE NEEDELMANN; JOHN NICOLELLIS; GEORGE O'NEIL; WILLIAM PELKER; ELI POLLOCK; "FRENCHIE" POWERS; 176
MURRELL PROCTOR; BERNARD L. RANDAZZO; GEORGE REGAN; SAMUEL REICHLER; MORRIS REICHLER; "HARROW ROE"; "RICHARD ROE"; RICHARD SAVAGE; EMIL SCHWARZ; EMANUEL SCHWARTZ; THOMAS SHARKEY; WILLIAM SIMPSON; FRANCIS SINCLAIR; FRANK STOLOWITZ; DAVID TELFER; TONY VENDITTI; PETER WASKIEWICZ; FRANK WEICK; EDWARD WEINHEIMER; JOHN WEINHEIMER; FRANK WEST, are hereby made defendants to this indictment and to each and every count thereof.

CONSPIRACY

XIV. Beginning on or about December 1, 1936, and continuously thereafter up to and including the date of the filing of this indictment and in the manner and by the means hereinafter set forth, within the Southern District 177
of New York, the defendants named in the foregoing Paragraph XIII of this indictment, together with divers other persons to the grand jurors unknown (said defendants and other persons being hereinafter sometimes referred to as "conspirators") well knowing all matters of fact in this indictment set forth and in violation of the Act of Congress of January 18, 1934, entitled "An Act to Protect

Trade and Commerce Against Interference by Violence, Threats, Coercion or Intimidation" (Public No. 376—73d Congress) (S. 2248), commonly known as the Anti-Racketeering Act, did then and there knowingly, wrongfully, wilfully, unlawfully and feloniously conspire and act concertedly with each other to obtain the payment of money and of other valuable considerations from the said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers by the use of, attempt to use and threat to use, force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities
179 moving in interstate trade and commerce. The said conspiracy is now described in further detail, that is to say:

DESCRIPTION OF CONSPIRACY

XV. It has been a part of said conspiracy to coerce and to compel in the manner and by the means hereinafter set forth, said shippers, owners, operators and drivers of said over-the-road motor trucks or their helpers to pay the sum of Nine (9.42) Dollars and forty-two cents for each large truck and the sum of Eight (8.41) Dollars and forty-one cents for each small truck transporting merchandise as aforesaid from states other than the State of New York into the State and Southern District of New York; the said
180 sums aggregating more than One Million (1,000,000) Dollars annually. The said coercion and compulsion has been exercised in the following ways, among others, to wit:

1. By preventing, hindering, restraining and impeding shippers, owners and drivers of said over-the-road motor trucks and their helpers from transporting, delivering and unloading said merchandise at the places of business of the consignees to whom it has been shipped within the city, county and state of New York and from picking up

merchandise within the city, county and state of New York for the return trips of said trucks and from transporting or delivering the same to the consignees thereof in states other than the State of New York;

2. By preventing, hindering, restraining and impeding consignees within the city, county and state of New York from accepting delivery of said merchandise so transported to their respective terminals or places of business from states other than the State of New York;

3. By coercing and compelling the drivers of said over-the-road motor trucks and their helpers to conduct said trucks to terminals owned, operated or controlled by said 182
shippers or some of them or elsewhere within the city, county and state of New York and there to transfer, turn over and deliver said trucks and the merchandise contained therein to members of the defendant union or to some one or more of them and to permit said members of defendant union exclusively thereafter to conduct said trucks and the merchandise contained therein to the places of business of the various consignees to whom it has been shipped within the city, county and state of New York and in all other respects to complete the transportation, delivery and unloading of said merchandise and to pick up merchandise within the state of New York for the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals or elsewhere 183
within the city, county and state of New York.

It has been a part of said conspiracy to coerce and to compel the payment of said money as aforesaid from and by said shippers, operators and drivers of said over-the-road motor trucks or their helpers entirely regardless of whether or not any services have been or are to be rendered therefor and entirely regardless of whether or not said drivers and their helpers have been or are members in good standing of a labor union in their respective states of

origin. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that in most instances little or no service whatsoever has been rendered by conspirators or by any of them in consideration for said money and that the drivers of said over-the-road motor trucks and their helpers not only have been members in good standing of a labor union in their respective states of origin but have been members in good standing of another local of the same international union of the American Federation of Labor with which the defendant union has been affiliated, namely, International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America. And the grand jurors
185 aforesaid, upon their oaths aforesaid, do further present that in most instances the services, if any, rendered by the members of defendant union have been of relatively short duration and of a negligent and careless nature frequently resulting in substantial damage to the trucks, the merchandise contained therein and to the good will of the shippers' business.

XVI. It has further been a part of said conspiracy to coerce and to compel, in the manner and by the means hereinafter set forth, the said shippers, owners and operators of said over-the-road motor trucks, to furnish other valuable considerations, namely, to enter into contracts and arrangements with the defendant union providing for the employment or continued employment at unreasonable
186 and excessive rates, prices or charges of an arbitrary and unwanted number of members of defendant union to conduct said trucks and the merchandise contained therein from the said terminals or elsewhere within the city, county and state of New York to the places of business of the various consignees to whom it has been shipped as aforesaid and in all other respects to complete the transportation, delivery and unloading of said merchandise and to pick up merchandise within the State of New York for

the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals or elsewhere within the city, county and state of New York. In many instances, the numbers of defendant union whom shippers have been coerced or compelled to employ or to keep employed, have been individuals of bad repute who have had little or no experience in driving or unloading trucks and who have been otherwise incompetent and irresponsible. The said services of said members of defendant union not only have been unsolicited and unwanted by said shippers, owners, operators and drivers of said over-the-road motor trucks, but have been neither necessary nor useful to said shippers or to said persons, 188
firms and corporations owning, operating or controlling said trucks or to said consignees since all of such transportation, loading, unloading and delivery could as well have been performed by the drivers of said over-the-road motor trucks and their helpers were it not for the fact that they have been impeded and prevented from making such deliveries as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that prior to on or about December 1, 1936, all of said services in fact were performed and would continue to be so performed by the drivers of said over-the-road motor trucks and their helpers were it not for the interference, hindrance and restraint imposed upon them by the conspirators as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said drivers of said over-the-road 189
motor trucks and their helpers are necessarily obliged to remain idle and inactive during the entire period of time required for the completion of the transportation, delivery, unloading and pick-ups of said merchandise by the members of defendant Union as aforesaid. Unless the said coercion and compulsion imposed by said conspirators as aforesaid, are accepted by said shippers, operators of over-the-road motor trucks and their helpers and con-

signees, they and each of them are hindered, restrained and prevented by the said conspirators in the manner and by the means hereinafter set forth from selling, transporting, delivering or receiving said merchandise in interstate commerce and from otherwise engaging in said interstate commerce in said merchandise. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that by reason of the said payments of money and of other valuable considerations, many of said shippers and of said persons, firms and corporations owning, operating or controlling said over-the-road motor trucks as aforesaid, have been unable to conduct their respective businesses at a
191 profit and have been obliged entirely to discontinue their transportation by motor truck to and from the State of New York.

XVII. It has further been a part of said conspiracy to coerce and to compel, in the manner and by the means hereinafter set forth, said shippers, owners and operators of said over-the-road motor trucks to pay sums of money ranging from One Thousand (1,000) Dollars to One Hundred Thousand (100,000) Dollars, for the alleged privilege of being allowed to conduct their respective businesses without being subjected to the various forms of coercion herein described from and by representatives and members of defendant Union.

192 MEANS OF EFFECTUATING CONSPIRACY

XVIII. Throughout the time and at the place alleged it was a further part of said conspiracy that the conspirators should use and they did in fact use force, violence and coercion in the Southern District of New York and elsewhere to obtain the payment of the aforesaid money and of the aforesaid other valuable considerations and to accomplish the aforesaid objects of said conspiracy in the following respects among others, to wit:

(a) Employing persons known to the conspirators and to persons engaged in the trucking business generally as "gangsters" and "gorillas" for the purpose of carrying out the means and methods herein described and particularly for the purpose of intimidating, threatening, assaulting and beating up persons owning, operating or controlling said over-the-road motor trucks, their drivers and helpers;

(b) Attempting to create and creating throughout the industry described in this indictment generally and in the minds of persons engaged therein, a feeling of fear and terror for the purpose of preventing persons from resisting the operation of the conspiracy described herein;

194

(c) Threatening physical violence against shippers or persons owning, operating, or controlling over-the-road motor trucks or their respective employees;

(d) Forcibly detaining or damaging or threatening to detain or damage over-the-road motor trucks engaged in conveying merchandise from shippers to consignees or others; or forcibly detaining or damaging or threatening to detain or damage the merchandise contained in such trucks;

(e) Assaulting shippers, owners, drivers of over-the-road motor trucks or their helpers;

(f) Forcibly preventing or obstructing deliveries of merchandise to consignees and pickups of merchandise for the return trips of over-the-road motor trucks;

195

(g) Following and spying upon over-the-road motor trucks, their drivers and helpers;

(h) Using threats, violence, boycotts, refusals to load, pickets and other means to the grand jurors unknown;

(i) Coercing shippers and persons, firms or corporations owning, operating or controlling over-the-road motor trucks to employ, and pay designated employees under the guise of union regulations;

(j) Refusing to load, unload, convey, deliver or handle merchandise;

(k) Assembling riotous and threatening gatherings near the places of business of consignees;

(l) Collecting money from persons, firms or corporations owning, operating or controlling over-the-road motor trucks or from other persons through the use of threats, intimidation, coercion or violence;

(m) And many other means and methods to the grand jurors unknown.

197 XIX. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the terms "property," "money" or "valuable considerations" used herein, neither represent nor include wages paid by a bona fide employer to a bona fide employee.

XX. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that their investigation herein was commenced upon the express direction of the Attorney General of the United States contained in letters of authority addressed to John Harlan Amen, Special Assistant to the Attorney General, and to Moses M. Lewis, Special Attorney, both dated March 7, 1938, and duly filed with the Clerk of the United States District Court for the Southern District of New York on March 15, 1938.

198 And so the grand jurors aforesaid, upon their oaths aforesaid, do present that the defendants above named at the time and place and in the manner and by the means aforesaid, conspired to obtain the payment of money and other valuable considerations by the use and threat to use force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that:

XXI. Beginning on or about December 1, 1936, and continuously thereafter up to and including the date of the filing of this indictment within the Southern District of New York, the defendants named in Paragraph XIII of this indictment, together with divers other persons to the grand jurors unknown (said defendants and other persons being hereinafter sometimes referred to as "conspirators") well knowing all matters of fact in this indictment set forth, and in violation of the Act of Congress approved 200
June 18, 1934, entitled "An Act To Protect Trade and Commerce Against Interference by Violence, Threats, Coercion or Intimidation" (Public No. 376—73d Congress) (S. 2248), commonly known as the Anti-Racketeering Act, did then and there knowingly, unlawfully, wilfully and feloniously conspire and act concertedly with each other to obtain the property of the said shippers, owners and drivers of said over-the-road motor trucks and their helpers with their consent induced by wrongful use of force and of fear in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce.

XXII. And pursuant to the said conspiracy and to accomplish the objects thereof, the conspirators have agreed 201
to employ and have in fact employed divers means and methods set forth in Paragraphs (XV) to (XVIII) and sub-paragraphs (a) to (m) of this indictment, said paragraphs and sub-paragraphs being here realleged with the same force and effect as though here set forth in full.

And so the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants above named at the time and place and in the manner and by

the means aforesaid, conspired to obtain the property of others with their consent induced by wrongful acts of force and of fear in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that:

203

XXIII. Beginning on or about December 1, 1936, and continuously thereafter up to and including the date of the filing of this indictment within the Southern District of New York, the defendants named in Paragraph XIII of this indictment, together with divers other persons to the grand jurors unknown (said defendants and other persons being hereinafter sometimes referred to as "conspirators") well knowing all matters of fact in this indictment set forth, and in violation of the Act of Congress approved June 18, 1934, entitled "An Act to Protect Trade and Commerce Against Interference by Violence, Threats, Coercion or Intimidation" (Public No. 376—73d Congress) (S. 2248), commonly known as the Anti-Racketeering Act, did

204 then and there knowingly, unlawfully, wilfully and feloniously conspire and act concertedly with each other to commit and threaten to commit acts of physical violence and of physical injury to the persons and property of the said shippers, owners and drivers of said over-the-road motor trucks and their helpers, in furtherance of a plan and purpose to obtain the payment of money and of other valuable considerations from the said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers, by the use of, attempt to use and threat to use,

force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce, and articles and commodities moving in interstate trade and commerce.

XXIV. And pursuant to the said conspiracy and to accomplish the objects thereof, the conspirators have agreed to employ and have in fact employed divers means and methods set forth in Paragraphs (XV) to (XVIII) and sub-paragraphs (a) to (m) of this indictment, said paragraphs and sub-paragraphs being here realleged with the same force and effect as though here set forth in full.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants above named 206
at the time and place and in the manner and by the means aforesaid, conspired to commit and threatened to commit acts of physical violence and of physical injury to the persons and property of said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers in furtherance of a plan and purpose to obtain the payment of money and of other valuable considerations from the said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers, by the use of, attempt to use and threat to use, force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce contrary to the form of statute in such case made and pro- 207
vided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that:

XXV. Beginning on or about December 1, 1936, and continuously thereafter up to and including the date of the

filing of this indictment within the Southern District of New York, the defendants named in Paragraph XIII of this indictment, together with divers other persons to the grand jurors unknown (said defendants and other persons being hereinafter sometimes referred to as "conspirators") well knowing all matters of fact in this indictment set forth, and in violation of the Act of Congress approved June 18, 1934, entitled "An Act To Protect Trade and Commerce, Against Interference by Violence, Threats, Coercion or Intimidation" (Public No. 376—73d Congress) (S. 2248), commonly known as the Anti-Racketeering Act, did then and there knowingly, unlawfully, wilfully and
209 feloniously conspire and act concertedly with each other to commit and threaten to commit acts of physical violence and of physical injury to the persons and property of said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers in furtherance of a plan and purpose to obtain the property of said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers, with their consent induced by wrongful use of force and fear in connection with and in relation to acts directly affecting interstate trade and commerce, and articles and commodities moving in interstate trade and commerce.

XXVI. And pursuant to the said conspiracy and to obtain the objects thereof, the conspirators have agreed to
210 employ and have in fact employed divers means and methods set forth in Paragraphs (XV) to (XVIII) and sub-paragraphs (a) to (m) of this indictment, said paragraphs and sub-paragraphs being here realleged with the same force and effect as though here set forth in full.

And so the grand jurors aforesaid, upon their oaths aforesaid, do further present that the defendants above named, at the time and place and in the manner and by the means aforesaid, conspired to commit and threatened

to commit acts of physical violence and of physical injury to the persons and property of shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers in furtherance of a plan and purpose to obtain the property of said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers, with their consent induced by wrongful use of force and of fear in connection with and in relation to acts directly affecting interstate trade and commerce contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

Dated, New York, May 31, 1938. 212

A true bill.

VERNON MUNROE, *Foreman.*

THURMAN ARNOLD,
Assistant Attorney General.

JOHN HARLAN AMEN,
Special Assistant to the Attorney General.

MOSES M. LEWIS,
Special Attorney.

LAMAR HARDY,
United States Attorney. 213

214 **Demurrer of Defendants Local 807, William Devery et al.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Plaintiff,
against
LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY, THOMAS L. HICKEY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS CLARKE, THOMAS KEHOE, et al.,
Defendants.
No. 102-394

215

Sirs:

PLEASE TAKE NOTICE that the above named defendants hereby withdraw their respective pleas of not guilty, heretofore interposed by them in the indictment herein.

216 AND YOU WILL PLEASE TAKE FURTHER NOTICE that the above named defendants do hereby demur to the indictment herein upon the following grounds, to wit:

I. That the said indictment does not set forth any facts sufficient to charge the defendants, or any of them, with the commission of any offense or crime against The United States of America.

II. That it appears upon the face of the said indictment that no offense or crime against The United States of America was committed by the defendants, or any of them.

Dated: New York, New York, June 15th, 1938.

Yours, etc.,

LOUIS B. BOUDIN,
Attorney for Thomas L. Hickey and Thomas Clarke,
Office & P. O. Address,
20 West 43rd Street,
Borough of Manhattan,
New York City. 218

BURTON K. WHEELER,
Attorney for Defendants William Campbell and Austin Furey.
and
RICE & MAGUIRE,
Attorneys for Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, William Devery, Sam Brennan, John Flaherty and Thomas Kehoe,
Office & P. O. Address,
122 East 42nd Street,
Borough of Manhattan, 219
New York City.

To:

LAMAR HARDY, Esq.,
United States District Attorney,
Southern District of New York.

CHARLES WEISER, Esq.,
Clerk, United States District Court,
Southern District of New York.

220 **Amended Demurrer of Defendants Ackalitis et al.**

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, Plaintiff, against JOSEPH ACKALITIS, GEORGE BAGLEY et al., Defendants.	}

221 *Sir:*

Joseph Ackalitis, George Bagley, Joseph Bolton, Joseph Bender, John Celecia, Henry Delgado, Robert Dillon, Frank Downs, Joseph Duffy, James Fitzgerald, James Flanagan, Fred Harris, John Horan, Andy Jakakas, Harry Jarvis, Max Katz, Abraham Kienofsky, Leonard LaMarne, Manuel Magan, Thomas Molloy, George Needelmann, John Nicolellis, George O'Neil, Eli Pollock, Francis Powers, Bernard L. Randazzo, George Regan, Richard Savage, Thomas Sharkey, William Simpson, Francis Sinclair, George Stolowitz, Tony Venditti, Peter Waskiewicz, Edward Weinheimer, John Weinheimer, Frank West, Samuel Bren[illegible], Michael Cahill, Joseph Deegan, Joseph Devlin, Edward Franz, Francis J. Henn, indicted herein as

222 Francis J. Hearn, Carroll Macomber, indicted herein as Carl Macomber, Michael Mulqueen, indicted herein as Michael Mosely, William Pelker, Murrell Proctor, Samuel Reichler, Morris Reichler, Emil Schwarz, Emanuel Schwartz, Frank Weick, James Murphy, Harry Casey, Louis LaRosa, hereby withdraw their respective pleas of not guilty heretofore interposed by them to the indictment herein.

AND YOU WILL PLEASE TAKE FURTHER NOTICE, that the above named defendants do hereby demur to the indictment herein, upon the following grounds, to wit:

1. That the said indictment does not set forth any facts sufficient to charge the defendants or any of them with the commission of any offense or crime against the United States of America.

2. That it appears upon the face of the said indictment that no offense or crime against the United States of America was committed by the defendants or any of them.

224

AND YOU WILL PLEASE TAKE FURTHER NOTICE, that the amended demurrer is filed pursuant to permission granted by Hon. Vincent L. Leibell, United States District Judge, on the 22nd day of June, 1938.

Dated, New York, June 28th, 1938.

Yours, etc.,

JAMES D. C. MURRAY,
Attorney for Defendants,
Office & P. O. Address,
233 Broadway,
Borough of Manhattan,
City of New York.

225

To:

UNITED STATES DISTRICT ATTORNEY,
Southern District of New York.

226 **Demurrer of Defendants Louis LaRosa and John Gaughan.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

LOUIS LAROSA and JOHN GAUGHAN,
Defendants.

227 *Sir:*

PLEASE TAKE NOTICE, that the above named defendants do hereby demur to the indictment herein, upon the following grounds, to wit:

1. That the said indictment does not set forth any facts sufficient to charge the defendants or any of them with the commission of any offense or crime against the United States of America.
2. That it appears upon the face of the said indictment that no offense or crime against the United States of America was committed by the defendants or any of them.

228 Dated, New York, July 7th, 1938.

Yours, Etc.,

JAMES D. C. MURRAY,
Attorney for Defendants,
Office & P. O. Address,
233 Broadway,
Borough of Manhattan,
City of New York.

Demurrer by Defendants (C-102-395).

226a

IN THE

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Plaintiff,
against
LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY; THOMAS L. HICKEY; SAMUEL BRENNAN; JOHN FLAHERTY; WILLIAM CAMPBELL; AUSTIN FUREY; THOMAS CLARKE; THOMAS KEHOE, et al.,
Defendants.

No. 102-395

227a

Sirs:

PLEASE TAKE NOTICE that the above named defendants hereby withdraw their respective pleas of not guilty, heretofore interposed by them to the indictment herein.

AND YOU WILL PLEASE TAKE FURTHER NOTICE that the above named defendants do hereby demur to the indictment herein upon the following grounds, to wit:

228a

I. That the said indictment does not set forth any facts sufficient to charge the defendants, or any of them, with the commission of any offense or crime against The United States of America.

II. That it appears upon the face of the said indictment that no offense or crime against The United States

226b *Demurrer by Defendants (C-102-395).*

of America was committed by the defendants, or any of them.

Dated, New York, New York, June 15th, 1938.

Yours, etc.,

LOUIS B. BOUDIN,
Attorney for Defendants
Thomas L. Hickey and Thomas Clarke,
Office & P. O. Address,
20 West 43rd Street,
Borough of Manhattan,
227b New York, N. Y.

BURTON K. WHEELER,
Attorney for Defendants
William Campbell and Austin Furey.

AND

RICE & MAGUIRE,
Attorneys for Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, William Devery, Sam Brennan, John Flaherty and Thomas Kehoe,
Office & P. O. Address,
228b 122 East 42nd Street,
Borough of Manhattan,
New York City.

To:

LAMAR HARDY, Esq.,
United States District Attorney,
Southern District of New York.

CHARLES WEISER, Esq.,
Clerk, United States District Court,
Southern District of New York.

Opinion of Leibell, D. J., Overruling Demurrer. 229

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, against LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY, THOMAS L. HICKEY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS CLARKE, THOMAS KEHOE, et al., Defendants.	No. C 102-394 No. C 102-395

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JOHN HARLAN AMEN, Esq., Special Assistant to the Attorney General, Attorney for the United States of America, U. S. Court House, Foley Square, N. Y. C. (MOSES M. LEWIS, Esq., Special Attorney).

LOUIS B. BOUDIN, Esq., EDWARD C. MAGUIRE, Esq., and BURTON K. WHEELER, Esq., Attorneys for Local 807, 20 East 43rd Street, New York City.

LOUIS B. BOUDIN, Esq., Attorney for Defendants, Thomas L. Hickey and Thomas Clarke.

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BURTON K. WHEELER, Esq., Attorney for defendants, William Campbell and Austin Furey.

RICE & MAGUIRE, Esqs., Attorneys for Defendants, William Devery, Sam. Brennan, John Flaherty, and Thomas Kehoe, 122 East 42nd Street, New York City (LOUIS B. BOUDIN, Esq., of counsel).

LEIBELL, D. J.

Demurrers have been filed by officers and members of Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America to two indictments. These indictments are very similar in their allegations and involve the same defendants who have filed demurrers. One indictment is based upon alleged violations of the provisions of the Sherman Anti-Trust Act; the other upon the alleged violation of provisions of the Federal Anti-Racketeering Act.

233 The demurrers are upon the following grounds in respect to each indictment:—

"I. That the said indictment does not set forth any facts sufficient to charge the defendants, or any of them, with the commission of any offense or crime against The United States of America.

II. That it appears upon the face of the said indictment that no offense or crime against The United States of America was committed by the defendants, or any of them."

The first indictment (#102-394) contains only one count. It charges Local 807 and certain of its officers, delegates and members and four other individuals with having
234 engaged in a combination and conspiracy to restrain interstate trade and commerce in the transportation by over-the-road motor truck of merchandise into the State of New York from other states of the United States and having effectuated the conspiracy by certain means and methods which include specific acts of intimidation and violence, all in violation of the provisions of the Sherman Anti-Trust Act.

In support of the demurrers to this indictment counsel for defendants argue that recent labor legislation definitely shows that the Sherman Act is now applicable to Labor Unions. The recent statutes referred to are:

1. The so-called Norris-LaGuardia Act (approved March 23rd, 1932—29 U. S. Code, Secs. 101-115).
2. The so-called Anti Racketeering Act (approved June 18th, 1934).
3. The National Labor Relations Act (approved July 5th, 1935).

The Sherman Anti-Trust Act became a law July 2, 1890. 236
Section 1 thereof (15 U. S. C. A. Sec. 1) provides as follows:—

"SECTION 1. TRUSTS, ETC., IN RESTRAINT OF TRADE ILLEGAL; PENALTY. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, c. 647, Sec. 1, 26 Stat. 209.)" 237

The Clayton Act became a law October 15, 1914, and added certain provisions to the Sherman Act. One of these provisions (Sec. 6 of the Clayton Act; 15 U. S. C. A. Sec. 17) states:—

"Sec. 17. ANTITRUST LAWS NOT APPLICABLE TO LABOR ORGANIZATIONS. The labor of a human being is not a commodity or article of commerce. Nothing

contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (Oct. 15, 1914, c. 323, Sec. 6, 38 Stat. 731.)"

239 Section 20 of the Clayton Act (29 U. S. C. A. Sec. 52 provides:

"Sec. 52. STATUTORY RESTRICTION OF INJUNCTIVE RELIEF. No restraining order or injunction shall be granted by any court of the United States, or a judge thereof, in any case between an employer and employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the
240 applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or com-

municating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike-benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any 242
law of the United States. (Oct. 15, 1914, c. 323, Sec. 20, 38 Stat. 738.)"

Section 6 of the Clayton Act was judicially construed in the majority opinion in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 469, as follows:—

"The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the Anti-trust Laws shall be construed to forbid the existence and operation of such organizations, or to forbid their members from *lawfully* carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or 243
conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects, and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organi-

zation to become a cloak for an illegal combination or conspiracy in restraint of trade, as defined by the Anti-trust Laws."

On March 23, 1932, the Norris-LaGuardia Anti-Injunction Act became a law (29 U. S. C. A. Secs. 101-115). Section 101 provides:—

"Sec. 101. ISSUANCE OF RESTRAINING ORDERS AND INJUNCTIONS; LIMITATIONS; PUBLIC POLICY.

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a
245 case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. (Mar. 23, 1932, c. 90, Sec. 1, 47 Stat. 70.)"

The "public policy in labor matters" is stated in Section 102 as follows:—

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise
246 actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers

of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Mar. 23, 1932, c. 90, Sec. 2, 47 Stat. 70.)"

"Yellow Dog" contracts are declared unenforceable by Section 103. An enumeration of specific acts, that are declared not subject to restraining orders or injunctions, is found in Section 104. Subdivisions (d), (e), (f) and (i) 248 of that section indicate that lawful means and measures, not involving fraud or violence, are specified in the enumeration of the acts that may not be enjoined.

Section 105 provides:—

"Sec. 105. DOING IN CONCERT OF CERTAIN ACTS AS CONSTITUTING UNLAWFUL COMBINATION OR CONSPIRACY SUBJECTING PERSON TO INJUNCTIVE REMEDIES. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this chapter. (Mar. 23, 1932, c. 90, Sec. 5, 47 Stat. 71.)" 249

Section 106 states a rule of evidence and provides that officers and members of labor organizations participating in or interested in a labor dispute shall not be held responsible for any unlawful acts of individual officers, members or agents except upon clear proof of actual participation, authorization or ratification.

Section 113 defines certain terms used in the statute including "a case involving or growing out of a labor dispute", "a person participating in or interested in a labor dispute" and the term "labor dispute". This last mentioned term is defined as:—

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and em-
> 251 ployee."

The Supreme Court in construing Section 20 of the Clayton Act (29 U. S. C. A. Sec. 52) stated that it was merely declaratory of the law as it stood before the enactment and introduced no new principle into the equitable jurisprudence of the Federal Courts. The Court limited the phrase "a dispute concerning terms of employment" to persons proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of their own employment, past, present or prospective. *Duplex Printing Press* v. *Deering* (*supra*) and *Amer. Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184. The Norris-LaGuardia Act (29 U. S. C. A. Sec. 113) so
252 defined the terms "labor dispute" and "persons participating or interested" therein, as to remove the limitations placed thereon by the Supreme Court's decisions.

Section 115 provides that all Acts or parts of Acts in conflict with the provisions of the (Norris-LaGuardia) Act are repealed.

Primarily the Norris-LaGuardia Act was directed against the practice of employers in invoking the jurisdiction of the United States District Courts, because of di-

versity of citizenship, on applications for injunctions in labor disputes, instead of suing in the State Courts. *Levering & Garrigues Co.* v. *Morrin*, 71 Fed. (2d) 284.

The Act was intended also to abolish "yellow dog" contracts (*United Electric Coal Companies* v. *Rice*, 80 Fed. (2d) 1, 8) and limit the effect of certain decisions of the Federal Courts enforcing so-called "yellow dog" contracts.

There is nothing in the Norris-LaGuardia Act from which it could be rightly argued that the Act barred any criminal prosecution of a bona fide labor union, its officers or members, under the Sherman Anti-Trust Act where the indictment charged a conspiracy in restraint of interstate commerce and where those engaged in such conspiracy are 254
alleged to have had recourse to violence or fraud in accomplishing the purposes of the conspiracy.

The Norris-LaGuardia Act excepts even from the application of its own provisions, cases where there is fraud, violence or criminal conduct.

> "When there is fraud, when there is violence, and when there is crime injunctions may issue. When any of those things are threatened or committed injunctions may ensue."
>
> "The intention of Congress was thus clearly expressed. It was evidently not intended to take from courts of equity, jurisdiction of suits to restrain *unlawful* acts or acts of *violence*." United Electric Coal Companies v. Rice, 80 F. (2d) 1, 8. 255

The socalled Anti-Racketeering Act will be later discussed in considering the demurrer to indictment #102-395.

The National Labor Relations Act (29 U. S. C. A. Secs. 151-166) contains a declaration of national policy on the right of employees to organize and to bargain collectively. (Sec. 151). The last two paragraphs of Section 151 state:—

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between the employers and employees.

257 It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate those obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, c. 372, Sec. 1, 69 Stat. 449.)"

In *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 22, the Chief Justice summarizes the provisions of the National Labor Relations Act as follows:—

258 "The scheme of the National Labor Relations Act—which is too long to be quoted in full—may be briefly stated. The first section sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of collective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free

flow of commerce.' The Act then defines the terms it uses, including the terms 'commerce' and 'affecting commerce.' Sec. 2. It creates the National Labor Relations Board and prescribes its organization Secs. 3-6. It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing. Sec. 7. It defines 'unfair labor practices.' It lays down rules as to the representation of employees for the purpose of collective bargaining. Sec. 9. The Board is empowered to prevent the described unfair labor practices affecting commerce and the Act prescribes the procedure to that end. The Board is authorized to petition designated 260
courts to secure the enforcement of its orders. The findings of the Board as to the facts, if supported by evidence, are to be conclusive. If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the Board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order. Sec. 10. The Board has broad powers of investigation. Sec. 11. Interference with members of the Board or its agents in the performance of their 261
duties is punishable by fine and imprisonment. Sec. 12. Nothing in the Act is to be construed to interfere with the right to strike. Sec. 13. There is a separability clause to the effect that if any provision of the Act or its application to any person or circumstances shall be held invalid, the remainder of the Act or its application to other persons or circumstances shall not be affected. Sec. 15."

In contrast with the language of these recent labor statutes, counsel for defendants points to the following quotation from the Supreme Court's opinion in the *Duplex* case (supra).

> "It is settled by these decisions that such a restraint produced by peaceable permission is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute."

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and from the Court's opinion in *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Ass'n.* 274 U. S. 37:—

> "The court further held by prior decisions of this court, it had been settled that a restraint of interstate commerce produced by peaceable persuasion was as much within the prohibition of the Anti-Trust Act as one accomplished by force or threats of force."

There are grounds for the contention of the defense that the provisions of the Norris-LaGuardia Anti-Injunction Act (29 U. S. C. A. Secs. 104, 105, 113 & 115) and of the Wagner National Relations Act would now make these two quotations inapplicable to a labor dispute that restrained
264 interstate commerce, where peaceful and lawful means were employed by the labor organization and its members. But the Sherman Act would still be applicable where the restraint of interstate commerce was produced by force or threats of force, and that is what is charged in this indictment.

Both these recent Labor Acts have gone far to limit the Sherman Anti-Trust Act in its application to labor disputes, but they have not gone so far as to strike the words

"lawfully" and "legitimate" from Section 6 of the Clayton Act (supra Sec. 17).

The second indictment herein (#102-395) against the same defendants, contains four counts. It charges violations of the Federal Anti-Racketeering Act (18 U. S. C. A. Secs. 420a to 420e). The first count charges that the defendants conspired and acted in concert to obtain the payment of money and other valuable considerations from shippers, operators, etc. of over-the-road motor trucks by the use of and threat to use force, violence and coercion in relation to acts directly affecting interstate trade and commerce. The second count charges conspiracy and acting concertedly to obtain the property of said shippers, owners, 266
etc. induced by alleged wrongful acts of force and of fear, in relation to acts directly affecting interstate commerce. The third count charges conspiracy and acting concertedly to commit acts of physical violence and physical injury to the persons and property of said shippers, operators, etc. in furtherance of a plan to obtain the payment of money and other valuable consideration from said shippers, operators, etc. by the use of and threat to use force, violence and coercion, in relation to acts directly affecting interstate commerce. The fourth count charges conspiracy and acting concertedly in the commission and threats to commit acts of physical violence etc. in furtherance of a plan to obtain the property of the said shippers, operators, etc., with their consent induced by the wrongful use of force and fear, in relation to acts directly affecting interstate 267
commerce.

Defendants assign five reasons for the demurrer to this indictment:—

"1. That the Act of Congress under which this indictment was found does not apply to labor unions.

2. That the indictment does not show that the defendants are not within the classes coming within the exceptions in the Act.

3. That the indictment does not state any overt acts.

4. That the indictment does not charge any specific crime.

5. That the indictment shows on its face that the alleged crime, defined by the Act under which the indictment was laid, was actually committed, and, therefore, an indictment for conspiracy will not lie."

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As to the first reason assigned—the Anti-Racketeering Act contains several exceptions in favor of labor unions.

"Sec. 420a. INTERFERENCE WITH TRADE AND COMMERCE BY VIOLENCE, THREATS, ETC.; PENALTIES.

Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property of protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or

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(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or

property in furtherance of a plan or purpose to violate subsections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine or $10,000, or both. (June 18, 1934, c. 569, Sec. 2, 48 Stat. 979.)"

"Sec. 420b. SAME; DEFINITIONS

(a) As used in sections 420a of this title the term 'wrongful' means in violation of the criminal laws of the United States or of any State or Territory. 272

(b) The terms 'property', 'money', or 'valuable considerations' used in section 420a of this title shall not be deemed to include wages paid by bona fide employer to a bona fide employee.

(c) The term 'trade or commerce' as used in section 420a of this title, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such territory or the District of Columbia and any State or other territory, and all other trade or commerce over which the United States has constitutional jurisdiction. (June 18, 1934, c. 569, Sections 1, 3, 48 Stat. 979, 980.)" 273

"420d. SAME; JURISDICTION OF OFFENSES

Any person charged with violating section 420a of this title may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, That no court of the United States shall construe or apply

any of the provisions of sections 420a to 420e of this title in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States. (June 18, 1934, c. 569, Section 6, 48 Stat. 980.)"

The first two exceptions in favor of labor unions indicate an intention on the part of Congress not to make the statute applicable to cases where the money or property or valuable consideration obtained or attempted to be obtained represents the payment of wages by a bona fide em-
275 ployer to a bona fide employee. The more general exception, contained in the last section, exempts any acts of bona fide labor organizations in lawfully carrying out their legitimate objects or in exercising their rights as expressed in existing Federal statutes.

Paragraph XV of the indictment herein states:—

"XV. It has been a part of said conspiracy to coerce and to compel in the manner and by the means hereinafter set forth, said shippers, owners, operators and drivers of said over-the-road motor trucks or their helpers to pay the sum of Nine (9.42) Dollars and forty-two cents for each large truck and the sum of
276 Eight (8.41) Dollars and forty-one cents for each small truck transporting merchandise as aforesaid from states other than the State of New York into the State and Southern District of New York; the said sums aggregating more than One Million (1,000,000) Dollars annually."

In paragraphs XVI and XVII it is alleged:—

"XVI. It has further been a part of said conspiracy to coerce and to compel, in the manner and

by the means hereinafter set forth, the said shippers, owners and operators of said over-the-road motor trucks, to furnish other valuable considerations, namely, to enter into contracts and arrangements with the defendant union providing for the employment or continued employment at unreasonable and excessive rates, prices or charges of an arbitrary and unwanted number of members of defendant union to conduct said trucks and the merchandise contained therein from the said terminals or elsewhere within the city, county and state of New York to the places of business of the various consignees to whom it has been shipped as aforesaid and in all other respects to complete the 278
transportation, delivery and unloading of said merchandise and to pick up merchandise within the State of New York for the return trips of said trucks and to conduct said trucks and the merchandise contained therein back to said terminals or elsewhere within the city, county and state of New York. In many instances, the members of defendant union whom shippers have been coerced or compelled to employ or to keep employed, have been individuals of bad repute who have had little or no experience in driving or unloading trucks and who have been otherwise incompetent and irresponsible. The said services of said members of defendant union not only have been unsolicited and unwanted by said shippers, owner, operators and drivers of said over-the-road 279
motor trucks, but have been neither necessary nor useful to said shippers or to said persons, firms and corporations owning, operating or controlling said trucks or to said consignees since all of such transportation, loading, unloading and delivery could as well have been performed by the drivers of said over-the-road motor trucks and their helpers were it not for the fact that they have been impeded and pre-

vented from making such deliveries as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that prior to on or about December 1, 1936, all of said services in fact were performed and would continue to be so performed by the drivers of said over-the-road motor trucks and their helpers were it not for the interference, hindrance and restraint imposed upon them by the conspirators as aforesaid. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said drivers of said over-the-road motor trucks and their helpers are necessarily obliged to remain idle and inactive
281 during the entire period of time required for the completion of the transportation, delivery, unloading and pick-ups of said merchandise by the members of defendant Union as aforesaid. Unless the said coercion and compulsion imposed by said conspirators as aforesaid, are accepted by said shippers, operators of over-the-road motor trucks and their helpers and consignees, they and each of them are hindered, restrained and prevented by the said conspirators in the manner and by the means hereinafter set forth from selling, transporting, delivering or receiving said merchandise in interstate commerce and from otherwise engaging in said interstate commerce in said merchandise. And the grand jurors aforesaid, upon their oaths aforesaid,
282 do further present that by reason of the said payments of money and of other valuable considerations, many of said shippers and of said persons, firms and corporations, owning, operating or controlling said over-the-road motor trucks as aforesaid, have been unable to conduct their respective businesses at a profit and have been obliged entirely to discontinue their transportation by motor truck to and from the State of New York."

"XVII. It has further been a part of said conspiracy to coerce and to compel, in the manner and by the means hereinafter set forth, said shippers, owners and operators of said over-the-road motor trucks to pay sums of money ranging from One Thousand (1,000) Dollars to One Hundred Thousand (100,000) Dollars, for the alleged privilege of being allowed to conduct their respective businesses without being subjected to the various forms of coercion herein described from and by representatives and members of defendant Union."

And paragraph XIX states: 284

"XIX. And the grand jurors aforesaid, upon their oaths aforesaid do further present that the terms 'property' 'money' or 'valuable considerations' used herein, neither represent or include wages paid by a bona fide employer to a bona fide employee."

Although paragraph XIX is not included by reference, in the Second, Third and Fourth counts of the indictment, paragraphs XV to XVIII are, and they are sufficient to indicate that at least part of the moneys and property alleged to have been obtained through the conspiracy did not represent the payment of wages by a bona fide employer to a bona fide employee. It appears also from the allegations of the indictment that the acts charged to the defendants could not be considered as the lawful exercise of its rights 285 by a bona fide labor organization in carrying out its legitimate objects, as such rights are expressed in the existing statutes of the United States. I am of the opinion that the indictment shows that the defendants are not within the classes covered by the exceptions in the Anti-Racketeering Act. The phrase "lawfully carrying out the legitimate objects thereof" is found both in Section 6 of the Clayton Act (15 U. S. C. A. Sec. 17) and in Section 6 of the Anti-

Racketeering Act (18 U. S. C. A. Sec. 420d). This phrase was discussed and construed by the Supreme Court in the *Duplex Printing* case (supra) as hereinabove quoted.

With respect to the contention that it is necessary to list in the indictment certain overt acts, the same rule applies to this statute as to the Sherman Anti-Trust Act. An overt act is not an essential element of the crime of conspiracy under the Sherman Anti-Trust Act—*Nash* v. *United States*, 229 U. S. 373, 378; *United States* v. *Trenton Potteries*, 273 U. S. 392, 402; nor under the Anti Racketeering Act—*United States* v. *Gramlich*, No. 3762 (D. C. S. D. Ill.) and *United States* v. *Frank McGlone*, No. 7291 (D. C. E. D. Pa.).

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Further, in respect to the contention that the indictment is defective in that it charges a conspiracy but does not list or state specific overt acts, a reading of the indictment discloses many acts specified therein, although they are not listed towards the end of the indictment as is customary in conspiracy indictments under the general conspiracy section of the Federal Penal Code (18 U. S. C. A. Sec. 88). The general conspiracy section is in language materially different from that employed in the Sherman Anti-Trust Act and in the Anti-Racketeering Act. Although this point is not mentioned in the opinion of the Court in *United States* v. *Gramlich, et al*, 19 Fed. Supp. 422 and *United States* v. *McGlone, et al*, 19 Fed. Supp. 285, it was raised on the motion to quash the indictment

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in the *Gramlich* case and in the demurrer in the *McGlone* case. Apparently the Courts did not think this contention had any merit.

The fourth reason assigned for the demurrer is that this indictment does not charge any specific crime. Definitely the indictment charges the defendants with a conspiracy and acting concertedly (18 U. S. C. A. Sec. 420a (d)) to commit the acts enumerated in subdivisions (a), (b) and (c) of said Sec. 420a and the particulars of those

acts are set forth in considerable detail in paragraphs XV to XVIII of the indictment. This will answer also the fifth reason assigned for the demurrer in the brief of defendants' counsel.

In construing the statutes herein discussed I have had in mind the principles stated by Mr. Justice Story in *United States* vs. *Winn*, 3 Sumn. 209, 211, as follows:—

> "* * * to search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature." 290

and by Chief Justice Marshall in *United States* v. *Wiltberger*, 5 Wheat. 76:—

> "The intention of the legislature is to be collected from the words they employ * * *."

If Congress had intended to grant the exemptions claimed for labor unions by defendants' counsel in his brief, that purpose could have been declared in the one case by a specific amendment to the Sherman Anti-Trust law and in the other by an unequivocal statement in the Anti-Racketeering Act, that under no circumstances or conditions was the statute to be construed by the Court as applicable to any activity of a labor union. Of course, the reason Congress did not insert any such provision in 291 either statute is that the legality of such an exemption of any group or class would be questionable. I believe that this accounts for the limited form of exemption granted to labor unions in the provisions of both statutes, namely, that they shall not apply to any bona fide labor union "lawfully carrying out the legitimate objects thereof."

On a demurrer, the allegations of the indictment are conceded to be true. That is for the purpose of testing the

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sufficiency of the indictment. In this opinion I have discussed in detail the defendants' points of attack and I believe that the conclusion is inescapable that the demurrers must be overruled and I so rule.

Dated, July 28th, 1938.

VINCENT L. LEIBELL,
United States District Judge.

Order Overruling Demurrer.

293 At a Stated Term of the District Court of the United States held in and for the Southern District of New York at the Courthouse thereof, Foley Square, in the Borough of Manhattan, City of New York, on the 26th day of September, 1938.

Present:

HONORABLE VINCENT L. LEIBELL,
United States District Judge.

UNITED STATES OF AMERICA,
Plaintiff,
against

294 LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY, THOMAS L. HICKEY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS KEHOE; et al.,
Defendants.

Order C102-394

The demurrer to the indictment in the above entitled matter having come on to be heard before me on the 22nd

day of June, 1938, and after hearing Louis B. Boudin, Esq., Burton K. Wheeler, Esq., Rice & Magiure, Esqs., (Edward C. Maguire, Esq., of counsel) and James D. C. Murray, Esq., for the defendants, in support of, and John Harlan Amen, Esq., Special Assistant to the Attorney General, for the plaintiff, in opposition thereto, and after due deliberation it is hereby

ORDERED, that the demurrer to the indictment herein be and the same is hereby in all respects overruled.

Dated, New York, N. Y., September 26th, 1938.

VINCENT L. LEIBELL, 296
U. S. D. J.

297

295a

Order Overruling Demurrer.

At a Stated Term of the District Court of the United States held in and for the Southern District of New York at the Court House thereof, Foley Square, in the Borough of Manhattan, City of New York, on the 26th day of September, 1938.

Present: HONORABLE VINCENT L. LEIBELL, *U. S. D. J.*

UNITED STATES OF AMERICA,
Plaintiff,

296a

against

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, WILLIAM DEVERY, THOMAS L. HICKEY, SAMUEL BRENNAN, JOHN FLAHERTY, WILLIAM CAMPBELL, AUSTIN FUREY, THOMAS CLARKE, THOMAS KEHOE, et al.,
Defendants.

C 102-395
Order

297a

The demurrer to the indictment in the above entitled matter having come on to be heard before me on the 22nd day of June, 1938, and after hearing Louis B. Boudin, Esq., Burton K. Wheeler, Esq., Rice & Maguire, Esqs. (Edward C. Maguire, Esq., of counsel), and James D. C. Murray, Esq., for the defendants, in support of, and John Harlan Amen, Esq., Special Assistant to the Attorney General, for the plaintiff, in opposition thereto, and after due deliberation it is hereby

Order Overruling Demurrers. 295b

ORDERED, that the demurrer to the indictment herein be and the same is hereby in all respects overruled.

Dated: New York, N. Y., September 26th, 1938.

VINCENT L. LEIBELL,
U. S. D. J.

Notice of Motion for Bill of Particulars.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK. 296b

UNITED STATES OF AMERICA,

against

JOSEPH ACKALITIS, GEORGE BAGLEY, et al.,

Defendants.

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of Edward C. Maguire duly verified the 14th day of September, 1938, the indictment heretofore filed against the above named defendants charging them with the crime of conspiracy to violating an Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation", (commonly known as the Anti Racketeering Act) and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court at the Court 297b

House thereof in the Southern District of New York, Foley Square, Borough of Manhattan, City and State of New York, in Room 318 thereof, on the 10th day of October, 1938, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order directing John Harlan Amen, Special Assistant to the Attorney General, to serve and file a Bill of Particulars with regard to the following matters alleged in the said indictment.

1. Give the exact date when and place where it is claimed that the defendants or any of them for the first time agreed and conspired with each other to obtain the
299 payment of money or of any other valuable consideration from any shipper, owner, operator, or driver of any over-the-road motor truck or from any of the helpers on such trucks.

2. State which of the defendants it is claimed were present when said alleged conspiracy was entered into to obtain the payment of money and of other valuable consideration from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks.

3. State what it is claimed was said by each of the defendants who were present when it was first agreed to obtain the payment of money and of other valuable consideration from shippers, owners, operators, drivers and
300 their helpers of over-the-road motor trucks.

4. State whether there were any subsequent meetings between the defendants or any of them when the subject

of obtaining the payment of money and of other valuable consideration from shippers, owners, operators, drivers, and their helpers of over-the-road motor trucks by the use or attempt to use and threaten to use force, violence and coercion, was discussed.

5. If the answer to Paragraph 4 is in the affirmative, give the dates when and the places where such meetings were held and the names of the defendants who were present at such meetings.

6. State what it is claimed was said and by whom at each of the aforesaid meetings.

302

7. State whether it is claimed that the defendants or any of them first agreed and conspired with each other to obtain the payment of money and other valuable consideration from shippers, owners, operators, drivers and their helpers of over-the-road trucks at a meeting of the defendant Union, and if such meeting was authorized by the officers of the defendant Union. If it is so claimed, give the date, time and place of such meeting and the names of the defendants who were present.

8. State whether it is claimed that there were any meetings of the defendant Union at which the subject of obtaining the payment of money and other valuable consideration from shippers, owners, operators, drivers and 303
their helpers of over-the-road motor trucks was discussed.

9. If the answer to Paragraph 8 is in the affirmative, give the dates when and the places where such meetings were held, and the names of the defendants who were present.

10. State what it was claimed was said and by whom at each of the alleged meetings.

11. State when and where and between which of the defendants it was agreed to compel shippers, owners, operators, drivers and their helpers of over-the-road motor trucks to pay the sum of $9.42 for each large truck and $8.41 for each small truck transporting merchandise from States other than the State of New York, into the Southern District of New York.

12. State what it is claimed was the basis of the figures of $9.42 for each large truck and $8.41 for each small truck, and who determined such figures.

13. State whether it is claimed that such figures of
305 $9.42 for each large truck and $8.41 for each small truck was authorized by the defendant Union and if so, give the names of the officers of the defendant Union it is claimed authorized the same.

14. Give the name of each and every shipper, owner, driver and helper of over-the-road motor trucks who was prevented, hindered, restrained or impeded from transporting, delivering or unloading merchandise at the place of business of the consignee to whom it was shipped within the City, County and State of New York.

15. State the name of each and every defendant by whom, the exact dates when, places where, and in what
306 manner and respect each and every shipper and each and every owner, driver and helper of over-the-road motor trucks was prevented, hindered, restrained or impeded from transporting delivering or unloading merchandise at the place of business of the consignee to whom it was shipped within the City, County and State of New York.

16. State in full each and every act done by each of the defendants referred to in the foregoing paragraph in impeding, hindering, restraining or preventing said shippers

and said owners, drivers and helpers of over-the-road motor trucks from transporting, delivering or unloading merchandise in the City, County and State of New York and state the exact date when and the place where it is claimed that each of said acts were done by each defendant and state the name of each defendant who committed each act.

17. State whether it is claimed that such acts as aforesaid or any of them were authorized by the defendant Union, if so, specify what acts were so authorized and give the name or names of the defendants authorizing each of such acts in behalf of the defendant union.

18. Give the name of each and every shipper and each and every owner, driver and helper of over-the-road motor truck who was prevented, hindered, restrained or impeded from picking up merchandise within the city, County and State of New York or the return trip of said truck and from transporting and delivering the same to the consignee thereof in states other than the state of New York. 308

19. State the name of each and every defendant by whom, the exact dates when, places where, and in what manner and respect, each and every shipper and each and every owner, driver and helper of over-the-road motor trucks was prevented, hindered, restrained or impeded from picking up merchandise within the City, County and State of New York or the return of such trucks and from transporting and delivering the same to the consignee thereof in states other than the state of New York. 309

20. State in full each and every act done by each of the defendants in the foregoing paragraph in preventing, hindering, restraining or impeding said shippers and said owners, drivers and helpers of over-the-road motor trucks from picking up merchandise within the City, County and

State of New York or the return trips of said trucks and from transporting and delivering the same to the consignee thereof, in states other than the State of New York, and state the exact date when and the place where it is claimed that each of the said acts were done by each defendant and state the name of each defendant who committed such act.

21. State whether it is claimed that any of the acts aforesaid were authorized by the defendant Union and if so, specify what acts were so authorized and state the name or names of the defendant authorizing each of said acts in behalf of the defendant Union.

311 22. State the name of each and every consignee within the County and State of New York who was prevented, hindered, restrained or impeded from accepting delivery of said merchandise so transported to their respective terminals or places of business from states other than the state of New York.

23. Give the name of each and every consignee within the County and State of New York who was prevented, hindered, restrained or impeded from accepting delivery of such merchandise to their respective terminals or places of business from States other than the State of New York.

24. State the name of each and every defendant by
312 whom, the exact dates when, places where, and in what manner and respect such consignees within the County and State of New York were prevented, hindered, restrained and impeded from accepting delivery of said merchandise so transported to their respective terminals or places of business from States other than the State of New York.

25. State in full each and every act done by each of the defendants in preventing, hindering, restraining or impeding each and every consignee within the County and

State of New York from accepting delivery of said merchandise so transported to their respective terminals or places of business from States other than the State of New York.

26. State whether it is claimed that such acts as aforesaid or any of them were authorized by the defendant Union, if so, specify what acts were so authorized and give the name or names of defendants authorizing each of such acts in behalf of defendant Union.

27. Give the name of each and every driver and helper of over-the-road motor truck who were compelled and 314
coerced to conduct trucks to terminals owned, operated, or controlled by said shippers or some of them or elsewhere within the City, County and State of New York.

28. State the name of each and every defendant by whom, the date when, and in what manner and respect each and every driver, or helper was compelled and coerced to conduct trucks to terminals owned, operated or controlled by said shippers or some of them or elsewhere within the City, County, and State of New York.

29. State what was said and what was done by the defendants or any of them on each of the foregoing occasions.

30. State the name and address of each and every shipper, owner, operator, or helper who was compelled or 315
coerced to conduct trucks to terminals operated or controlled by said shippers or some of them or elsewhere within the City, County, and State of New York.

31. Give the address of each and every terminal and each and every other place where the trucks were conducted on each of the foregoing occasions and give the

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names of the defendants alleged to have conducted said trucks on each occasion.

32. State to which of the defendants of the date when and exact place where the said truck and merchandise were turned over to each defendant.

33. State when and by which of the defendants the merchandise so transferred or turned over was conducted on each of the foregoing occasions.

34. Give the name and address of the consignee to whom said merchandise was consigned or conducted on
317 each of the foregoing occasions.

35. Give the names of the persons or firms whom delivered merchandise to the defendants for shipments back to terminals or elsewhere within the City, County, and State of New York.

36. State whether these persons or firms were in any way threatened or coerced into delivering merchandise to terminals or elsewhere within the City, County and State of New York and if so, give the names of persons or firms who were intimidated and the dates when, and the places where they were so intimidated, coerced or compelled.

37. Give the names of the defendants or any of them
318 whom it is claimed so coerced and compelled said persons or firms.

38. State what was said and done by each of the defendants on each of the foregoing occasions.

39. State each and every occasion giving the date, time and place when and the name of each defendant who demanded or received money when no service whatsoever had

been rendered, and give the date, the time, when and the place where each and every payment was made pursuant to such demand.

40. State the name of each defendant receiving such payments and the date and time when, and the place where such payments were received by each defendant.

41. State the name of each and every shipper, owner, operator, driver or helper who, it is claimed, made such payments and state the name of each defendant who, it is claimed, received such payments and state the name of each and every person who, it is claimed, acted in behalf of each of the aforesaid shippers, owners, operators, drivers or helpers in making each said payment. 320

42. Set forth each and every occasion when and give the name of the defendant who on each occasion rendered careless and negligent service resulting in substantial damage to the trucks and the merchandise contained therein, and give the name of the owner whose trucks and the name of the shipper whose merchandise was so damaged on each occasion.

43. State in what manner and respect the service by each of the defendants on each occasion was careless or negligent. State the amount of damage on each occasion, and the name of each defendant causing such damage on each occasion, stating the exact time when and the exact place where such damage occurred. 321

44. Give the names of the shippers, owners and operators of over-the-road motor trucks who entered into contracts and arrangements either orally or in writing with the defendant Union provided for the employment or continued employment at unreasonable and excessive rates, prices or charges of an arbitrary or unwanted number of

members of defendant Union to conduct said trucks and the merchandise contained therein from the said terminals or elsewhere within the City, County, and State of New York to the place of business of the various consignees to whom it had been shipped, and state in what respect such contracts and arrangements, both oral and written, were unreasonable.

45. State in what respect it is claimed the said contracts and arrangements both oral and written, provided for excessive rates.

323 46. Set forth the acts done or things said which caused the shippers, owners and operators mentioned in the foregoing paragraph to enter into the foregoing contracts and arrangements with the defendant union.

47. Give the names of the defendants who committed the alleged acts or made the alleged statements which caused the shippers, owners, and operators to enter into the foregoing contracts with the defendant union.

48. State when and where the alleged acts were committed or the alleged statements were made.

49. State which of the persons, firms, and corporations owning, operating and controlling over-the-road motor
324 trucks were obliged to discontinue their transportation by motor-truck to and from the State of New York.

50. State which of the said persons, firms and corporations owning and operating and controlling over-the-road motor trucks were obliged to discontinue their transportation by motor truck to and from the State of New York as a result of the defendants or any of them.

50. State what was said and done and by whom it was said and done which obliged the said persons, firms and

corporations running, operating and controlling over-the-road motor trucks to discontinue their transportation by motor truck to and from the State of New York.

51. Set forth the date and place of each of the foregoing alleged occurrences.

52. Give the names of the shippers, owners, and operators of over-the-road motor trucks which paid money for the privilege of being allowed to conduct their respective business without being subjected to coercion and the amounts paid by them.

53. Set forth the dates when and the places where the 326
money was paid.

54. Give the names of the defendant or defendants to whom the money was paid.

56. Set forth each and every act, the time when committed and the place where committed which caused the said shippers, owners and operators to pay the money as alleged.

57. State whether it is claimed that the alleged payments or collections of money were with the knowledge or approval of the defendant Union.

58. State whether it is claimed that the alleged pay- 327
ments or collections of money or any part thereof were received by the defendant Union and if so, give the amounts and the dates of such payments or collections and specify from whom made and give the name or names of the persons receiving such payments or collections in behalf of the defendant Union.

59. Give the names of shippers, owners, operators or their employees who were threatened with physical violence.

60. Give the dates when and the names of the defendants who made threats of physical violence.

61. State where the threats were made.

62. State in what manner the defendants attempted to create and created throughout the trucking industry and in the minds of persons engaged therein a feeling of fear and terror.

329

63. State what was done and by whom in attempting to create and creating in the minds of persons engaged in the shipping industry, a feeling of fear and terror.

64. Give the names of the persons who forcibly detained or damaged or threatened to damage or detain over-the-road motor trucks that engaged in conveying merchandise from shippers to consignees or otherwise, or the merchandise contained therein.

65. Give the names of the shippers, owners, operators, or controllers, whose motor trucks or merchandise were damaged or detained.

330

66. Give the names of the shippers, owners, controllers, drivers or their helpers, to whom threats of damaging or detaining were made.

67. State the dates when and places where the said threats were made.

68. Give the dates when and the places where the said trucks were damaged or detained.

69. Give the names of the shippers, owners, drivers of over-the-road motor trucks or their helpers who were assaulted.

70. Give the dates when they were so assaulted.

71. State which of the defendants so assaulted them.

72. Set forth the place where the alleged assaults occurred.

73. Give the names of the shipper, owner, controller, operator, driver of over-the-road motor trucks or their helpers, who were forcibly prevented or obstructed from 332
delivering merchandise to consignees and forcibly prevented or obstructed from picking up merchandise for return trips.

74. State the dates when and place where they were so forcibly prevented or obstructed.

75. State the names of the defendants who so forcibly prevented or obstructed them.

76. State which of the defendants named in paragraphs 11, 12 and 13 of the indictment expressly agreed to obtain the payment of money and of other valuable considerations from shippers, owners, operators and drivers of over-the-road motor trucks and their helpers by use or attempt 333
to use and threat to use force, violence and coercion.

77. Give the dates when the individuals mentioned in the preceding paragraph agreed to obtain the payment of money and other valuable considerations from shippers, owners, operators, drivers and helpers of over-the-road motor trucks, by use or attempt to use and threat to use force, violence and coercion.

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78. State where the foregoing individuals made the alleged agreement.

79. State what was said by each of the defendants when it is alleged they agreed to obtain the payment of money and of other valuable considerations from said shippers, owners, operators, drivers of over-the-road motor trucks and their helpers, by use or attempt to use and threat to use force, violence and coercion.

80. Set forth what the Government will claim was said and done by each of the defendants mentioned in paragraphs 11, 12 and 13 of the indictment in furtherance of
335 the conspiracy.

81. Set forth the dates when and the places where the alleged acts were committed or statements made and for such other and further relief as may be just in the premises.

Dated: New York, N. Y., September 14, 1938.

Yours, etc.,

RICE & MAGUIRE,
Attorneys for defendants, Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America; William Devery, Samuel Brennan, John Flaherty and
336 Thomas Kehoe,
Office & P. O. Address,
No. 122 East 42nd Street,
Borough of Manhattan,
City of New York.

To:

JOHN HARLAN AMEN, Esq.,
Special Assistant to the
Attorney General.

Affidavit of Edward C. Maguire in Support of Motion for Bill of Particulars. 337

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

against

JOSEPH ACKALITIS, GEORGE BAGLEY, et al.,

Defendants.

338

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EDWARD C. MAGUIRE, being duly sworn, deposes and says:

That he is the attorney for the defendants, Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America; William Devery, Samuel Brennan, John Flaherty, and Thomas Kehoe.

That at the March 1938 term, an indictment was found against the above named defendants and others by the Grand Jurors of the United States of America, sworn in the District Court of the United States for the Southern District of New York, charging them with the crime of unlawfully conspiring to violate an Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation". 339

The indictment, in substance, alleges that the above named defendants and others knowingly, wrongfully, wilfully, unlawfully and feloniously conspired and agreed to obtain the payment of money and other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks, by the use of, at-

tempt to use, and threat to use, force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce, in violation of the Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation", (otherwise known as the Anti-Racketeering Act).

Examination of the indictment reveals that it alleges in broad and general terms what are purported to be "ways, among others" in which the defendants generally furthered the alleged conspiracy. No specific acts com-
341 mitted by any of the defendants, however, have been alleged. The indictment in all respects is completely silent as to any acts or any particular things done by the individual defendants. Nor are there any allegations stating the time or the place of the commission of such acts or things done in furtherance of the conspiracy As a matter of fact, there is nothing in the indictment which may apprize any individual defendant of the accusations and charges that have been brought against him.

The indictment further contains the broad accusation that certain general things were done in furtherance of the conspiracy by "representatives" of the Union. It is recognized that any Union may act as the representative in behalf of its members, but it is certainly true both in law and in fact that the member or individual is in no way capable
342 or authorized to act for a Union without specific authority being granted to him. There is nothing in the indictment showing what particular acts the Union committed in furtherance of the conspiracy or the names of its representatives in the commission of those specific acts. Even assuming that certain things were done by the individual defendants, it does not follow that they can be attributed to the defendant Union or that the Union even had knowledge of them.

Some of the officers of the defendant Union have been individually named in the indictment, but nowhere is it shown what each individual officer did in behalf of the defendant Union in furtherance of the conspiracy or even that such officers were acting in their representative capacities.

It is impossible to ascertain from the indictment the specific acts constituting the alleged wrongs, and as a result, the defendants are in utter ignorance of the facts that the prosecution expects to prove against them. Under the circumstances, the defendants will be unable to produce their own proofs and to meet and offset those of the prosecution.

It is respectfully submitted that justice demands that the items herein requested be furnished the defendants so that they may be enabled to adequately prepare for trial, and so that the prosecution may not be placed in a position of unfair advantage over the defendants.

WHEREFORE, your deponent respectfully prays that this Court make an order directing John Harlan Amen, Special Assistant to the Attorney General, to serve and file a bill of particulars of the matters alleged in the indictment, and that such other and further relief as may be just in the premises be granted.

That no previous application for the relief herein sought has been made to this or any other Court or Judge.

EDWARD C. MAGUIRE.

Sworn to before me this
14th day of September, 1938.

GERTRUDE MADSEN,
Notary Public.

346 **Notice of Motion for Bill of Particulars.**

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA against JOSEPH ACKALITIS, GEORGE BAGLEY, et al., Defendants.	)

347 *Sirs:*

PLEASE TAKE NOTICE, that upon the annexed affidavit of James D. C. Murray, duly sworn to the 14th day of September, 1938, the indictment heretofore filed against the above named defendants, charging them with the crime of conspiring to violate an Act of Congress of January 18, 1934, entitled, "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation", and upon all the papers and proceedings heretofore had herein, the undersigned will move this court at the Courthouse, Foley Square, Borough of Manhattan, City of New York, Room 318 thereof, on the 26th day of September, 1938, at 10:30 o'clock in the forenoon of said date or as soon thereafter as counsel can be heard,
348 for an order directing John Harlan Amen, Special Assistant to the Attorney General, to serve and file a bill of particulars with regard to the following matters alleged in the indictment:

1. Give the date when the defendants or any of them for the first time agreed and conspired with each other to obtain the payment of money and of other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks.

2. State where the defendants or any of them for the first time agreed and conspired with each other to obtain the payment of money and of other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks.

3. State which of the defendants were present when it was first agreed to obtain the payment of money and of other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks.

4. State what was said by each of the defendants who were present when it was first agreed to obtain the payment of money and of other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks. 350

5. State whether there were any subsequent meetings between the defendants or any of them when the subject of obtaining the payment of money and of other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks by the use of, attempt to use, and threat to use, force, violence and coercion was discussed.

6. If the answer to paragraph 5 is in the affirmative, give the dates when, the places where, and the names of defendants who were present. 351

7. State what was said and by whom at each of the alleged meetings.

8. State when and where and between which of the defendants it was agreed to compel shippers, owners, operators, drivers and their helpers of over-the-road motor trucks to pay the sum of $9.42 for each large truck and $8.41 for

each small truck transporting merchandise from states other than the State of New York into the Southern District of New York.

9. Give the dates when and the names of shippers, owners, drivers and their helpers of over-the-road motor trucks were prevented, hindered, restricted and impeded from transporting, delivering and unloading merchandise at the place of business of the consignee to whom it was shipped within the city, county and state of New York.

10. Give the names of the defendants who impeded, hindered, restrained and prevented said shippers, owners, 353 drivers and their helpers of over-the-road motor trucks from transporting on each of the foregoing occasions.

11. State what acts were done by the defendants or any of them on each of the foregoing occasions.

12. Give the dates when and the names of the shippers, owners, drivers and their helpers of over-the-road motor trucks who were prevented, hindered, restricted and impeded from picking up merchandise within the city, county and state of New York for the return trips of said trucks and from transporting and delivering the same to the consignee thereof in states other than the State of New York.

354 13. State what acts were done by the defendants or any of them on each of the foregoing occasions.

14. Give the names of the defendants who impeded, hindered, restrained and prevented the said shippers, owners, drivers and their helpers from transporting on each of the foregoing occasions.

15. Give the dates when and the names of the shippers, owners, drivers and their helpers of over-the-road motor

trucks who prevented, hindered, restrained and impeded consignees within the county and state of New York from accepting delivery of said merchandise so transported to their respective terminals or places of business in states other than the State of New York.

16. Give the names of the defendants who impeded, hindered, restrained and prevented consignees from accepting delivery of said merchandise on each of the foregoing occasions.

17. State what acts were done by the defendants or any of them on each of the foregoing occasions. 356

18. Give the dates when and the names of the drivers and their helpers of over-the-road motor trucks who were compelled and coerced to conduct their trucks to terminals owned, operated or controlled by said shippers or some of them, or elsewhere within the city, county and state of New York.

19. Give the names of the defendants who compelled and coerced the said drivers and their helpers to conduct said trucks to terminals owned, operated and controlled by said shippers or some of them, or elsewhere within the city, county and state of New York.

20. State what was said and what was done by the defendants or any of them on each of the foregoing occasions. 357

21. Give the addresses of the terminals where the trucks were conducted on each of the foregoing occasions.

22. State to which of the defendants and when the said trucks and merchandise were turned over.

23. State when and by which of the defendants the merchandise so transferred was conducted on each of the foregoing occasions.

24. Give the name and address of the consignee to whom said merchandise was consigned on each of the foregoing occasions.

25. Give the names of the shippers who delivered merchandise to the defendants for shipment back to terminals or elsewhere within the city, county and state of New York.

359 26. State whether these shippers were in any way threatened or coerced into delivering merchandise to the defendants for shipment to terminals or elsewhere within the city, county and state of New York.

27. If so, give the names of the shippers who were intimidated and the occasions when they were so intimidated or coerced or compelled.

28. Give the dates when they were so coerced and compelled.

29. Give the names of the defendants or any of them who coerced and compelled them.

360 30. State what was said and/or where done by the defendants on each of the foregoing occasions.

31. Set forth each and every occasion when and the name of each defendant who received money when no service whatsoever had been rendered, and give the name of the shipper, owner, driver and helper who paid money and to which defendant when no service whatsoever had been rendered.

32. Set forth each and every occasion when, and the name of the defendant who rendered careless and negligent service resulting in substantial damage to the trucks and merchandise contained thereon, and give the name of the owner whose truck, and the name of the shipper whose merchandise, was damaged as a result of the careless and negligent services of the defendants.

33. Give the names of the shippers, owners and operators of over-the-road trucks who entered into contracts and arrangements with the defendant union providing for the employment or continued employment at unreasonable and excessive rates, prices or charges, or an arbitrary and 362
unwanted number of members of defendant union to conduct said trucks and the merchandise contained therein from the said terminals or elsewhere within the city, county and state of New York to the places of business of the various consignees to whom it had been shipped.

34. Set forth the acts done or things said which caused the shippers, owners and operators mentioned in the foregoing paragraph to enter into the foregoing contracts and arrangements with the defendant union.

35. Give the names of the defendants who committed the alleged acts or made the alleged statements which caused the shippers, owners and operators to enter into the foregoing contracts with the defendant union. 363

36. State when and where the alleged acts were committed or the alleged statements were made.

37. State which of the persons, firms and corporations owning, operating and controlling over-the-road motor trucks were obliged to discontinue the transportation by motor truck to and from the state of New York.

38. State which of the said persons, firms and corporations owning and operating and controlling over-the-road motor trucks were obliged to discontinue the transportation by motor truck to and from the state of New York as a result of the defendants or any of them.

39. State what was said and done and by whom it was said and done which obliged the said persons, firms and corporations owning, operating and controlling over-the-road motor trucks to discontinue the transportation by motor truck to and from the state of New York.

365 40. Set forth the date and place of each of the foregoing alleged occurrences.

41. Give the names of the shippers, owners and operators of over-the-road motor trucks which paid money for the privilege of being allowed to conduct their respective businesses without being subjected to coercion and the amounts paid by them.

42. Set forth the dates when and the places where the money was paid.

43. Give the names of the defendant or defendants to whom the money was paid.

366 44. Set forth each and every act, the time when committed, and the place where committed, which caused the said shippers, owners and operators to pay the money as alleged.

45. Give the names of the shippers, owners, operators or their employees who were threatened with physical violence.

46. Give the dates when and the names of the defendants who made threats of physical violence.

47. State where the threats were made.

48. State in what manner defendants attempted to create and created throughout the trucking industry and in the minds of persons engaged therein a feeling of fear and terror.

49. State what was done and by whom in attempting to and creating in the minds of persons engaged in the shipping industry a feeling of fear and terror.

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50. Give the names of the persons who forcibly detained or damaged or threatened to damage or detain over-the-road motor trucks engaged in conveying merchandise from shippers to consignees or otherwise, or the merchandise contained therein.

51. Give the names of the shippers, owners, operators or controllers whose motor trucks or merchandise were damaged or detained as set forth in the previous paragraph.

52. Give the names of the shippers, owners, controllers, drivers or their helpers to whom threats of damaging or detaining were made.

53. State the dates when and the places where said threats were made.

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54. Give the dates when and the places where the said trucks were damaged or detained.

55. Give the names of the shippers, owners, drivers of over-the-road trucks and their helpers who were assaulted.

370 *Notice of Motion for Bill of Particulars.*

56. Give the dates when they were so assaulted.

57. State which of the defendants so assaulted them.

58. Set forth the place where the alleged assaults occurred.

59. Give the name of the shipper, owner, controller, operator, drivers of over-the-road motor trucks or their helpers who were forcibly prevented or obstructed from delivering merchandise to consignees and forcibly prevented or obstructed from picking up merchandise for return trips.

371

60. State the dates when and places where they were so forcibly prevented or obstructed.

61. State the names of the defendants who so prevented or obstructed said shippers, owners, controllers or operators, drivers and their helpers.

62. State which of the defendants named in paragraphs 11, 12 and 13 of the indictment expressly agreed to obtain the payment of money and of other valuable considerations from shippers, owners, operators and drivers of over-the-road motor trucks and their helpers by use or attempt to use and threat to use force, violence and coercion.

372

63. Give the dates when the individuals mentioned in the preceding paragraph agreed to obtain the payment of money and of other valuable considerations from said shippers, owners, operators and drivers of over-the-road motor trucks and their helpers by use or attempt to use and threat to use force, violence and coercion.

64. State where the foregoing individuals made the alleged agreement.

65. State what was said by each of the defendants when it is alleged they agreed to obtain the payment of money and other valuable considerations from shippers, owners, operators and drivers of over-the-road motor trucks and their helpers by use or attempt to use or threat to use force, violence and coercion.

66. Set forth what the government will claim was said and done by each of the defendants mentioned in paragraphs 11, 12 and 13 of the indictment in furtherance of the conspiracy.

67. Set forth the dates when and the places where the alleged acts were committed or statements made; and for such other and further relief as may be just in the 374
premises.

Dated, New York, September 14, 1938.

Yours, etc.,

JAMES D. C. MURRAY,
Attorney for Defendants,
Office and P. O. Address,
233 Broadway,
Borough of Manhattan,
City of New York.

375

376 **Affidavit of James D. C. Murray in Support of Motion for Bill of Particulars.**

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

JOSEPH ACKALITIS, GEORGE BAGLEY, et al.,

Defendants.

377 STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JAMES D. C. MURRAY, being duly sworn, deposes and says:

That he is the attorney for the defendants Joseph Ackalitis, George Bagley, Joseph Bolton, Joseph Bender, John Celecia, Henry Delgado, Robert Dillon, Frank Downs, Joseph Duffy, James Fitzgerald, James Flanagan, Fred Harris, John Horan, Andy Jakakas, Harry Jarvis, Max Katz, Abraham Klenofsky, Leonard LaMarne, Manuel Magan, Thomas Molloy, George Needelmann, John Nicolellis, George O'Neil, Eli Pollock, Francis Powers, Bernard L. Randazzo, George Regan, Richard Savage, Thomas
378 Sharkey, William Simpson, Francis Sinclair, George Stolowitz, Tony Venditti, Peter Waskiewicz, Edward Weinheimer, John Weinheimer, Frank West, Samuel Brennan, Michael Cahill, Joseph Deegan, Joseph Devlin, Edward Franz, Francis J. Henn, indicted herein as Francis J. Hearn, Carroll Macomber, indicted herein as Carl Macomber, Michael Mulqueen, indicted herein as Michael Mosely, William Pelker, Murrell Proctor, Samuel Reichler, Morris Reichler, Emil Schwarz, Emanuel Schwartz, Frank Weick, James Murphy, Harry Casey, Louis LaRosa.

That at the March, 1938 Term, an indictment was found against the above named defendants and others by the Grand Jurors of the United States of America, sworn in the District Court of the United States for the Southern District of New York, charging them with the crime of unlawfully conspiring to violate an Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation".

The indictment, in substance, alleges that the above named defendants and others knowingly, wrongfully, willfully, unlawfully and feloniously conspired and agreed to obtain the payment of money and other valuable considerations from shippers, owners, operators, drivers and their 380
helpers of over-the-road motor trucks, by the use of, attempt to use, and threat to use, force, violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce, in violation of the act of congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation".

A reading of the indictment discloses that it alleges in general terms that overt acts were committed in pursuance of the conspiracy. The specific acts committed by each of the defendants in furtherance of the agreement, however, are not alleged. The indictment is absolutely silent as to the particular things done by each of the defendants, 381
or the time or place of their commission.

It is impossible to ascertain from the indictment the specific facts constituting the alleged wrong, and, as a result, defendants are in utter ignorance of the facts that the prosecution expects to prove against them. Under the circumstances, the defendants will be unable to produce their own proofs and to meet and sift those of the prosecution's.

382 *Affidavit of James D. C. Murray.*

It is respectfully submitted that justice demands that the items herein requested be furnished the defendants so that they may be enabled to adequately prepare for trial, and so that the prosecution may not be placed in a position of unfair advantage over the defendants.

WHEREFORE, your deponent respectfully prays that this court make an order directing John Harlan Amen, Special Assistant to the Attorney General, to serve and file a bill of particulars of the matters alleged in the indictment, and that such other and further relief as may be just in the premises be granted.

383 That no previous application for the relief herein sought has been made to this or any other court or judge.

JAMES D. C. MURRAY.

Sworn to before me this
14th day of September, 1938.

384

Notice of Motion for Bill of Particulars.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, et al.

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of Michael Murtagh, sworn to the 22nd day of September, 1938, the indictment heretofore filed against the above named defendants charging them with the crime of conspiracy to violate an Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation (commonly known as the Anti-Racketeering Act) and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court at the Courthouse thereof in the Southern District of New York, Foley Square, Borough of Manhattan, City and State of New York, in Room 318 thereof, on the 3rd day of October, 1938, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing John Harlan Amen, Special Assistant to the Attorney General, to serve and file a bill of particulars with regard to the following matters alleged in the said indictment.

As to paragraph XVIII of the said indictment:

Where and when in the Southern District of New York or elsewhere it is claimed the defendant, Michael Murtagh, alone or in concert with any co-conspirators, used force, violence and coercion to obtain the payment of any monies or other valuable considerations to accomplish any objects of the conspiracy alleged in said paragraph of the indictment, and by whom said monies or other valuable considerations are alleged to have been paid to said defendant Murtagh.

(a) State where and on what occasions it is claimed
389 that the defendant Murtagh employed any person or persons known to be "gorillas" or "gangsters" for the purpose of carrying out the means and methods described in the indictment. State on whose behalf it is claimed that the defendant Murtagh employed said "gorillas" or "gangsters".

(b) State in what manner and by what means it is claimed that the defendant Murtagh created a feeling of fear and terror throughout the trucking industry. State upon which individuals and at what times and occasions it is claimed that the defendant Murtagh created such a feeling.

(c) State the acts of physical violence which it is
390 claimed the defendant Murtagh threatened any shippers or owners, operators or controllers of over-the-road motor trucks. State the time and place of said alleged acts and the names of the person or persons against whom it is claimed that the threats were made.

(d) State in what manner and at what times did the defendant Murtagh forcibly detain or damage any motor trucks or threaten to do so. State who were the owners of said trucks.

(e) State the time and place when it is alleged that the defendant Murtagh assaulted any shipper, owner or driver of any over-the-road motor trucks or their helpers. State the names of any person or persons allegedly assaulted.

(f) State in what manner, at what time or times and at what place or places did the defendant Murtagh prevent or obstruct the deliveries and pickups of any merchandise. Name the shippers or owners whose deliveries or pickups were allegedly prevented by the defendant Murtagh.

(g) State on what occasions and by what means it is claimed that the defendant Murtagh followed and spied upon over-the-road motor trucks, their drivers and helpers. State the names of the owners of such trucks, their drivers and helpers. 392

(h) State when and against whom it is alleged that the defendant Murtagh used threats, violence, boycotts and refusals to load.

(i) State the manner in which and the time or times at which it is claimed that the defendant Murtagh coerced any shippers, persons, firms or corporations owning, operating or controlling over-the-road motor trucks to employ and pay designated employees under the guise of union regulations. State the names of said shippers, persons, firms or corporations. 393

(j) State the time when and the place or places where the defendant Murtagh refused to load, unload, convey, deliver or handle merchandise. Describe said merchandise and state what connection it is claimed the defendant Murtagh had with the loading, unloading, conveying, delivering or handling of such merchandise.

(k) State the place where and the time at which it is alleged that the defendant Murtagh assembled riotous and threatening gatherings near the places of business of consignees. State the names of said consignees.

(l) State the names of the persons, firms or corporations owning, operating or controlling motor trucks or any other persons from whom it is claimed that the defendant Murtagh collected money through the use of threats, intimidations, coercion or violence. State the time or times and the place or places at which it is alleged that such moneys were collected by the defendant Murtagh; and for such other and further relief as may be just in the premises.

395

Dated, New York, September 22, 1938.

Yours, etc.,

LOUIS MISHELL,
Attorney for Defendant Michael Murtagh,
Office & P. O. Address,
475 5th Avenue,
Borough of Manhattan,
New York City.

To:

396 JOHN HARLAN AMEN, Esq.,
Special Assistant to the Attorney General.

Affidavit of Michael Murtagh in Support of Motion for Bill of Particulars.

397

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, et al.

398

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

MICHAEL MURTAGH, being duly sworn, deposes and says: I am one of the defendants in the above entitled action.

That at the March 1938 Term, an indictment was found against me and seventy-five other defendants by the Grand Jurors of the United States of America, sworn in the District Court of the United States for the Southern District of New York, charging them with the crime of unlawfully conspiring to violate an Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation". 399

The indictment, in substance, alleges that the defendants knowingly, wrongfully, willfully, unlawfully and feloniously conspired and agreed to obtain the payment of money and other valuable considerations from shippers, owners, operators, drivers and their helpers of over-the-road motor trucks, by use of, attempt to use and threats to use force,

400 *Affidavit of Michael Murtagh.*

violence and coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce, in violation of the Act of Congress of January 18, 1934, entitled "An Act to protect trade and commerce against interference by violence, threats, coercion or intimidation" (otherwise known as the Anti-Racketeering Act).

The indictment is drawn in loose and general terms and purports to enumerate various ways in which the conspiracy was allegedly furthered. No specific acts allegedly committed by myself or any of the other defendants have
401 been alleged nor is there set forth the time or place of the commission of any acts or things effected in furthering the conspiracy nor does the indictment disclose anything which informs me as an individual defendant of any accusation or charge that has been brought against me.

I specifically call the Court's attention to the fact that of the seventy-odd defendants all except six are either a union known as "Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America" or officers, agents, delegates, business representatives, trustees or members of said union. I am one of the aforementioned six and nowhere in the indictment is there any allegation indicating any connection between myself and any member, officer, agent, delegate or business repre-
402 sentative of said union. I unequivocally state that I am not, nor at any time have I been, a member of defendant union. I have not, nor have I had any, connection with same either as an agent, officer, delegate, business representative or trustee.

Throughout the indictment there are allegations with reference to certain acts committed by the various defendants in concert, but nowhere is it shown what I as an individual did in furtherance of the alleged conspiracy.

It is impossible to ascertain from the general nature of the indictment the specific acts constituting my alleged wrongdoing and as a result I am unaware of the facts that the prosecution expects to prove against me. As a result, I will neither be able to produce my own proofs nor to meet and offset those of the prosecution.

It is respectfully submitted that justice demands that the items herein requested be furnished to me so that I may be enabled to adequately prepare for trial and so that the prosecution may not be placed in a position of unfair advantage over the defendants.

WHEREFORE, your deponent respectfully prays that this Court make an order directing John Harlan Amen, Special 404
Assistant to the Attorney General, to serve and file a bill of particulars of the matters alleged in the indictment, and that such other and further relief as may be just in the premises be granted.

That no previous application for the relief herein sought has been made to this or any other Court or Judge.

MICHAEL MURTAGH.

Sworn to before me this
22nd day of September, 1938.

WILLIAM CARLOCK,
Notary Public,
New York County. 405

406 **Stipulation That Motions for Bill of Particulars Cover Both Indictments.**

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,
against
JOSEPH ACKALITIS, GEORGE BAGLEY, et al.,
Defendants.

407 UNITED STATES OF AMERICA,
Plaintiff,
against
JOSEPH ACKALITIS, GEORGE BAGLEY, et al.,
Defendants.

UNITED STATES OF AMERICA,
Plaintiff,
against
LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA,
408 et al.,
Defendants.

WHEREAS, two (2) indictments have been filed herein one of which (C 102-395) was returned under the Anti-Racketeering Act and the other of which (C 102-394) was returned under the Sherman Anti-Trust Act both of which are similar in form and substance; and

WHEREAS, motions for bills of particulars on behalf of certain of the defendants have been filed only as to indictment number C 102-395 (Anti-Racketeering Act); and

WHEREAS, counsel for the respective parties hereto desire that the decision of the court on said motions be considered not only an adjudication of said motions as to indictment number C 102-395 (Anti-Racketeering Act) but also as an adjudication of identical motions as to indictment number C 102-394 (Sherman Anti-Trust Act);

IT IS HEREBY STIPULATED by and between counsel for the respective parties hereto that the defendants' motions herein for bills of particulars as to indictment number 410
C 102-395 (Anti-Racketeering Act indictment) be made applicable in all respects to indictment number C 102-394 (Sherman Anti-Trust Act indictment) and that the decision of Judge Knox on said motions be deemed also an adjudication of identical motions made as to said indictment number C 102-394.

Dated: New York, October 10, 1938.

JOHN HARLAN AMEN,
Special Assistant to the Attorney General.

LOUIS B. BOUDIN,

RICE & MAGUIRE; 411

LOUIS B. BOUDIN,
EDWARD C. MAGUIRE,
BURTON K. WHEELER,
Attorneys for Local 807.

LOUIS B. BOUDIN,
LOUIS B. BOUDIN,
Attorney for defendants Thomas L. Hickey and Thomas Clarke.

BURTON K. WHEELER, by E. C. M.,
BURTON K. WHEELER,
Attorney for defendants William Campbell and Austin Furey.

LOUIS MISHELL,
Attorney for defendant Michael Murtagh.

JAMES D. C. MURRAY,
JAMES D. C. MURRAY,
Attorney for defendants Joseph Ackalitis, et al.

413

RICE & MAGUIRE,
RICE & MAGUIRE,
Attorneys for defendants William Devery, Samuel Brennan, John Flaherty and Thomas Kehoe.

Approved:

JOHN C. KNOX, D. J.,
October 14, 1938.

414

Bill of Exceptions.

415

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA; WILLIAM DEVERY; THOMAS L. HICKEY; SAMUEL BRENNAN; JOHN FLAHERTY; WILLIAM CAMPBELL; AUSTIN FUREY; THOMAS CLARKE; THOMAS KEHOE; MICHAEL MURTAGH; J. NOONAN; FRANKIE "DOE"; CHARLES HOROWITZ; A. SLACTA; "JOHN DOE"; "JOHN" ACKALITIS; GEORGE BAGLEY; JOSEPH BOLTON; JOSEPH BENDER; JOHN BROWN; MICHAEL CAHILL; HARRY CASEY; JOHN CELECIA; JOSEPH DEEGAN; VINCENT DEL DUCA; HENRY DELGADO; JOSEPH DEVLIN; ROBERT DILLON; FRANK DOWNS; JOSEPH DUFFY; JAMES FITZGERALD; J. FLANAGAN; EDWARD FRANZ; JOHN GAUGHAN; FRED HARRIS; FRANCIS J. HEARN; JOHN HORAN; ANDY JAKAKAS; HARRY JARVIS; SAM JONES; M. KATZ; ABRAHAM KLENOFSKY, alias "RED" KLEIN; LEONARD LA MARNE; "JOHN" LACEY; LOUIS LAROSE, alias "LOUIS LA ROSA"; CARL MACOMBER; MANUEL MAGAN; THOMAS MOLLOY; "MOSELY" MULQUEEN; JOSEPH MURPHY; GEORGE NEEDELMAN; JOHN NICOLELLIS; GEORGE O'NEIL; WILLIAM PELKER; ELI POLLOCK; "FRENCHIE" POWERS; MURRELL PROCTOR; BERNARD L. RANDAZZO; GEORGE REGAN; SAMUEL REICHLER; MORRIS REICHLER; "HARROW ROE"; "RICHARD ROE"; RICHARD SAVAGE; EMIL SCHWARZ; EMANUEL SCHWARTZ; THOMAS SHARKEY; WILLIAM SIMPSON; FRANCIS SINCLAIR; FRANK STOLOWITZ; DAVID TELFER; TONY VENDITTI; PETER WASKIEWICZ; FRANK WEICK; EDWARD WEINHEIMER; JOHN WEINHEIMER and FRANK WEST,

Defendants.

416

C. 102-394
C. 102-395

417

New York, April 15th, 1940.
10.30 A. M.

Before: HON. MURRAY HULBERT, *D. J.*, and a Jury.

APPEARANCES:

JOHN T. CAHILL, Esq., United States Attorney, for Government; JOHN T. CAHILL, Esq., EDWARD J. ENNIS, Esq., DAVID L. MARKS, Esq., and JOHN L. BURLING, Esq., Assistant United States Attorneys.

EDWARD C. MAGUIRE, Esq., attorney for defendant Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America; EDWARD C. MAGUIRE, Esq., BURTON K. WHEELER, Esq., and LOUIS B. BOUDIN, Esq., of counsel.

JAMES D. C. MURRAY, Esq., attorney for defendants
419 George Bagley, Joseph Bender, Michael Cahill, William Campbell, Joseph Deegan, Robert Dillon, Frank Downs, Joseph Duffy, J. Flanagan, Austin Furey, John Gaughan, John Horan, Andy Jakakas, M. Katz, Abraham Klepofsky, alias "Red" Klein, Leonard La Marne, Carl Macomber, Manuel Magan, "Mosely" Mulqueen, Joseph Murphy, George Needelmann, William Pelker, Bernard L. Randazzo, Samuel Reichler, Thomas Sharkey, William Simpson, Frank Stolowitz, Tony Venditti, Peter Waskiewicz, Edward Weinheimer, John Weinheimer and Harry Zollinger, indicted as "Richard Roe."

EDWARD C. MAGUIRE, Esq., attorney for John Flaherty, Samuel Brennan, William Devery and Eli Pollock.

420

LOUIS B. BOUDIN, Esq., attorney for defendants "Frenchie" Powers, Thomas L. Hickey and Thomas Clarke.

JOHN J. DUFF, Esq., and JOSEPH ARONSTEIN, Esq., attorneys for J. Noonan.

ANTHONY J. GRAZIANO, Esq., attorney for Al Slacta.

CORNELIUS F. COLLINS, Esq., attorney for defendant Michael Murtagh.

The Court: Gentlemen, before we undertake the trial, the marshal has arranged facilities for the accommodation of the defendants in the manner in which you observed that they are sitting now. Of course, I realize in a case of this kind the real necessity is that counsel shall have facilities to talk with their clients. There may be occasions when you might want to talk to a particular defendant or defendants who may be in the last row, and additional chairs will be provided here, so if, as and when you want to call them up you may do it.

If it would be of any benefit to you, these tables may be shifted, and instead of running parallel with the bench they can run perpendicular to it, if you prefer to have 422
it that way, and the table at which defendants' counsel are sitting can be put on the right-hand side of the court, so that you would have the defendants who are sitting in the front row immediately at your back. Then if at any time you want to have the defendants interchange positions that can be done. That you can think over, and the arrangement can be changed during the recess period if you wish.

Now, there is one other matter that I will mention now and presently we will take a recess to consider it. The term of the jurors in this court ends today. That is a two-week period for which they are drawn. Of course, the jurors are often accustomed to sitting for more than two weeks because of the cases we have had which have 423
run into months rather than weeks.

There are 140 jurors here this morning in the jury pool room, as we call it, none of whom will be required for service today in any court room because I have found upon inquiry that all of the judges are engaged in the trial of cases that have stood over from last week and there will be no new cases taken up today or possibly tomorrow. Now, there are, of course, I suppose, on the

panel some jurors who came here with the expectation that they would not be required to serve more than two weeks, and it might seriously interfere with their business if they were called into this case which is likely to take several weeks. I suppose also that there are jurors on the panel who have pronounced ideas on the subject involved in this case, and it did seem to me that it might be advisable to have the full panel brought in here and certain questions put to them for the purpose of ascertaining any possible bias or prejudice which they may have, and those jurors who are disqualified or who would be excused for cause could then be promptly disposed of and
425 then out of the remaining jurors twelve could be drawn and we could proceed with the examination of those jurors in extenso. I mention it now because I know when a thought of that kind is just thrown out you gain an impression and an opportunity to turn it over in your minds. However, we will have an opportunity to talk it over, and I am not intending that any innovations will be introduced into the procedure for the trial of this case just in the interest of shortening the trial.

Will the clerk call the names of the defendants?

Mr. Cahill: If your Honor please, since the Government is severing as to certain defendants, perhaps it would be better if I indicated the defendants as to whom the Government will go to trial.

The Court: Yes.

426 Mr. Cahill: The Government at this time moves for the trial of indictments No. 102-394 and No. 102-395, as to the defendants set forth in the list which I now ask permission to hand up to the Court.

The Court: Do I understand, Mr. Cahill, that the defendants named in the indictments and as to whom you now move to trial are identical?

Mr. Cahill: That is true, your Honor.

The Court: All right.

Mr. Cahill: If your Honor please, the Government at this time moves to sever as to the other defendants mentioned in the two indictments I have enumerated which are not set forth in the list I have just handed up to the Court.

Mr. Boudin: On behalf of the defendants Hickey and Clarke I object to the severances.

The Court: Why?

Mr. Boudin: I understand that my associates make the same objection on the behalf of other defendants. Really for all of the defendants I speak and particularly for those whom I appear on the record, but I think a motion will be made on behalf of those defendants as to whom this 428
trial is sought to be severed on the ground that it is prejudicial.

The Court: How do you claim that it is prejudicial?

Mr. Boudin: The reason is that various problems may arise in the course of the trial as to which the question of taking the witness stand may arise, and if a defendant should take the witness stand in this case it might prejudice him when he comes to trial.

The Court: You mean if a defendant as to whom the case is severed takes the witness stand in this case and then is later brought to trial as a severed defendant, that it will be prejudicial to him?

Mr. Boudin: It might be prejudicial to him.

The Court: Well, of course, if he is a defendant and 429
the case is severed as to him, he can't be called as a witness.

Mr. Boudin: That is true.

The Court: Except by his own consent.

Mr. Boudin: That is correct.

The Court: Certainly he has the advice of counsel in determining whether his taking the witness stand would be prejudicial to him or not. If he felt it was, he need not do it.

Mr. Boudin: I would like to explain to your Honor, in the first place, that of the particular defendants that I have mentioned, one of them is an officer of the union. The union is on trial. Now, it might be a question as to whether he should not take the witness stand in order to explain union workings and so forth to protect the interests of the union. It would be in a dual capacity of an individual defendant and a union defendant, and he would have to face the decision now, not knowing whether he will ever be called to trial or not. Now, I think that is a matter which might prejudice his interest in the case, particularly in view of the fact that there are
431 no overt acts set forth in the indictment; as I had occasion to say to your Honor in chambers, we are really groping in the dark. We don't know what will come up here. There are no facts stated in the indictment; there are conclusions and general allegations that don't mean anything from a lawyer's point of view, and I think it might seriously prejudice their case.

The Court: Is Hickey the president of the union?

Mr. Boudin: He is the secretary and treasurer of the union. Mr. Devery is the president of the union.

The Court: What position does Clarke occupy?

Mr. Boudin: He is one of the business agents. These are the officers.

The Court: What do you say, Mr. Cahill?

Mr. Cahill: Well, if your Honor please, as to the
432 severance here it seems to me that the argument made would have application to any situation where a severance was asked.

Certainly the Government in preparing for trial is entitled to take into account the availability of witnesses as to certain of the defendants at the time the trial is moved, and I think, unless some particular or peculiar situation is shown here, the ordinary rules should apply.

Mr. Boudin: If your Honor please, I would like to add the following to what I have said: I am talking for the particular defendants I have mentioned because not only do I represent them personally formally on record but because they are officers of the union; they are here in their capacity as officials. Now, here they are trying the case as to the union. The union has gone to much expense to defend itself; it would have that same expense all over again if these officers are brought to trial again. If the Government thinks this case against these defendants is weak, why not dismiss the case against these defendants so that we have only one trial. I think that would be the fair thing to do. 434

Mr. Murray: May I say, if your Honor please, it represents a rather anomalous situation: they hold the union in as a defendant and yet they sever the case of every officer of the union.

Mr. Cahill: Of course, there are changes in officers from time to time.

The Court: Well, suppose you are prosecuting a corporation and you had also involved the officers of the corporation and you ask for a severance as to the individuals, these officers. Now, a corporation can only speak through someone; it can't speak otherwise. And you establish a strong case, prima facie case, against that corporation, and in order to overcome that prima facie case counsel for the corporation felt that it was necessary to call the officers to refute certain testimony that was given, and the officers, or some of them, were perhaps represented by other counsel and their counsel advised them that if they become witnesses for the corporation defendant it would prejudice the defense of their own cases when called for trial: would that not really be compelling an officer of a corporation to testify against himself in order to discharge his duty as an officer of that corporation? 435

Mr. Cahill: As I understand Mr. Murray's statement, your Honor, it seems to me that it is too broad, because these indictments were returned under date of May 31, 1938.

The Court: That is the very thing I had in mind; that they spent two years to prepare this case.

Mr. Cahill: That is true, your Honor, and may I say that, as I understand the facts, the defendants Campbell and Furey were at the time the indictment was returned delegates of the union who had jurisdiction over the west side of the Borough of Manhattan, with which in large part this trial will be concerned. So I think Mr. Murray's
437 statement is too broad.

The Court: Are you severing as to Campbell and Furey?

Mr. Cahill: No, your Honor. Campbell and Furey are to go on trial before your Honor.

The Court: Was Hickey the secretary of the local at the time?

Mr. Cahill: I understand he was, your Honor.

The Court: And was Clarke a business agent at that time?

Mr. Cahill: That is my understanding.

The Court: Did Clarke as business agent have jurisdiction within the territory covered by the indictment?

Mr. Cahill: It is possible, your Honor, that for some part of it or occasionally he might have, but it is primarily
438 concerning Campbell and Furey. I want to say one thing more: Your Honor mentioned that there were two years to prepare this case for trial and I wouldn't for a moment have in your Honor's mind the thought that the Government had been remiss in that regard.

The Court: Oh, no.

Mr. Cahill: I want you to understand that there was this equity arrangement that obtained until very recently, and it has been because of that, of course, that the case was not earlier moved for trial.

The Court: I am too well acquainted with the situation, Mr. Cahill, which obtains in this court to know how difficult it is to find judges who are available to sit in a case that is likely to take as long as this case. That is the paramount reason for the delay in bringing this case to trial; but, at the same time, the fact that the indictment was filed in May, 1938, indicates to me that there has been plenty of time to investigate this case and know what witnesses can be made available, dependent upon what defendants go to trial.

Mr. Cahill: If your Honor please, I have had this case given to me quite recently. As you know, it is an Anti-Trust Division case taken over by me for purposes of trial. 440
If what counsel is pressing for is dismissal as to those defendants where a severance is sought, I would be very hesitant to assume that responsibility, because, I might frankly say to your Honor, there is an unavailability of evidence as to those defendants at this time, but I must confess that I would be unable to state as a matter of knowledge that it might not turn out that that evidence was available. Now, where we have a group this large, of course, we constantly run into that kind of situation. I have no desire to be unfair to these men. Your Honor knows that, but at the same time I query whether I have the right in this case to move to dismiss as to the other men where I think no evidence had been had in their case. No particular facts are called to my attention here which distinguishes this case from any other case. 441

The Court: The severance must not be used for the purpose of holding in reserve certain defendants——

Mr. Cahill: I agree.

The Court: —for the purpose of finding out upon the trial as to those against whom you move whether that evidence may be adduced.

Mr. Cahill: I think that would be unfair if it were done, and I assure your Honor I would not do that. That is not in my mind.

The Court: This is not a pretrial as to the other defendants.

Mr. Cahill: I agree entirely.

Mr. Graziano: On behalf of Al Slacta, a defendant who is not a member of Local 807, representing the Catholic Labor Defense, and realizing that this trial will continue for a great amount of time, and the facts of my client's case, I am willing to consent to the severance as to my client Al Slacta, and I was wondering if Mr. Cahill from his records would be willing to consent to a dismissal as to that defendant who is not a member of 807 and never was a member of 807.

443 Mr. Cahill: I am sorry. I cannot accept a distinction between membership in the local and non-membership, because we already have a defendant going on trial who is not a member of the local.

The Court: Well, I will grant the motion for severance as to that defendant.

Mr. Graziano: May I also make mention of this to Mr. Cahill, since he wasn't in the case at the time? My defendant is the only defendant who has been released without bail.

The Court: Well, I will grant the severance as to your defendant if you do not object to it; so he is no longer before me now.

Mr. Maguire: May the record show that the objection already made in behalf of Hickey and Clarke is also made 444 in behalf of William Devery, the president, Samuel Brennan, the recording secretary, and John Flaherty, a trustee at that time?

Mr. Collins: I represent the defendant Michael Murtagh, also an individual defendant and not a member of the union. I at this time have no objection to the severance as to the case of Michael Murtagh.

The Court: That will be granted.

Now, there are five defendants as to whom objection is made specifically on the ground that they are officers of the defendant union. I take it therefore that all the other defendants, individual defendants, are either members of the local or are persons not affiliated with the local or the union itself. Am I correct in that assumption?

Mr. Cahill: There is one defendant going on trial, your Honor, who is not a member of the union.

The Court: I say that. I am speaking now with respect to those defendants as to whom you move a severance. There are five of them who are officers of the local.

Mr. Cahill: That is true.

The Court: But all the others are either members of 446
the local or not affiliated with it, but not officers?

Mr. Cahill: That is true.

The Court: All right. Now, I will grant the motion as to othese other defendants; as to Hickey, Clarke, Devery, Brennan and Flaherty, as to these five I will reserve decision as to the present. Now, have you a motion here on consolidation?

Mr. Cahill: Yes, if your Honor please. The Government at this time moves to consolidate Indictments No. 102-394 and No. 102-395 for the purposes of trial. The Government makes the motion on the ground, first, that there is identity as to the defendants named in both indictments; second, that the same facts will prove the allegations in both indictments; and, third, that the offenses are similar
offenses. 447

Mr. Boudin: If your Honor please, as to the last ground it is quite clear that they are not similar offenses. One is a misdemeanor and one is a felony. The Anti-Racketeering Act is a felony. The offenses under the Anti-Trust Act are a misdemeanor; they are not offenses of the same kind, nor are they of the same kind of offenses under any other contemplation of law.

Now, in this connection what the district attorney may have in mind here is that he intends to prove both offenses by proving certain facts. Now, that we have no knowledge of, as I have had occasion to state repeatedly, and the indictments do not contain any averments of fact; they do not contain statements of offenses; no particular overt acts are pleaded. Secondly, there is absolutely no way of telling at this point as to whether or not the indictments are based on the same facts. I take it under Section 557, Title 18, under which this motion is made, that it must appear before your Honor at the time of the making of the motion that the indictments are based on the same acts.

449 Now, there is no way in which your Honor from a reading of the indictments can come to that conclusion. There are no acts stated in the indictments, no overt acts, and there is no way in which your Honor may determine that the indictments are based on the same acts, and therefore there is no ground, under Section 557, as I read the section, upon which a consolidation may be allowed.

Mr. Wheeler: May I say one word, your Honor?

The Court: Senator Wheeler.

Mr. Wheeler: It seems to me that it is entirely prejudicial to the defendants to have to come in here and answer an indictment charging them with conspiracy under the Sherman Anti-Trust Act and also one which was made a felony by the anti-racketeering statute. I happened to be a member of the Senate at the time that this anti-racketeering statute was passed. It was passed during the hysteria of the kidnaping and racketeering that was going on, and it was stated that it was not intended—and it is so stated in the act—that it was not intended to reach a legitimate labor organizaion. Now, had it been the case that it was contemplated at all to use the anti-racketeering statute against a legitimate labor organization, it would never have passed the Senate of the United States or House of Representatives.

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Now, we are faced with the idea that after they are indicted under the anti-trust act, then they are brought in under the anti-racketeering statute and now they are asking to consolidate them after the indictments are returned.

Now, the Court, of course, it seems to me, should take judicial notice of the fact that there is a certain hysteria and certain prejudice against anything that relates to racketeering.

Now, under those circumstances, with no acts set up in the indictment, it is going to be highly prejudicial to these defendants and the union, which is said to be a legitimate labor organization, a member of the American Federation 452
of Labor, to charge them in the same indictment, one, with anti-racketeering, and second, with a violation of the Sherman Anti-Trust Law.

I submit to the Court that it is bad enough to put the defendants on trial under the Sherman Anti-Trust Law where you bring in everything and anything. It was first held that the Sherman Anti-Trust Law did not reach a labor organization. The Congress of the United States intended to and thought they were eliminating a labor organization from that statute. The Supreme Court of the United States held otherwise and put an interpretation upon that, and then the Congress of the United States adopted the so-called Clayton Act which it was thought eliminated a labor organization from the Sherman Act, and
the courts held otherwise. But now, after they have in- 453
dicted them under the Sherman Anti-Trust Law and then indicted them under the anti-racketeering statute, to consolidate those two together cannot help but prejudice the defendants, and I am frankly amazed to think that the district attorney and that the Department of Justice would come into this Court and ask that these two be joined in the same indictment.

The Court: Those two indictments were filed at the same time. Is there any legal reason why the counts in the anti-racketeering indictment could not have been included as counts in the indictment under the Sherman Law?

Mr. Boudin: Your Honor is asking the question of counsel for the defense?

The Court: Yes.

Mr. Boudin: I should say that if they can originally put them in there the same objection would lie. Section 557 permits the consolidation of the kind of indictments which could have been originally joined, but I claim these couldn't
455 have been joined because they are not the same kind of indictments; they are not of the same class, and they are not based on the same acts; at least, it does not appear that they are based on the same acts.

Your Honor will recall that at common law you could not join an indictment for a felony with an indictment for a misdemeanor. The question as to whether they can be joined has always been if they were based on the same acts. While one may be a felony and one a misdemeanor, they must nevertheless belong to the same class and must be based on the same act and the indictment must so state so the Court before whom the motion is made may determine for itself and not have to rely on the bare statements of the counsel for the government or district attorney that he knows that they are based on the same act. In our
456 judicial system a motion is addressed to the Court and the Court must make a determination upon the facts known to the Court and not to somebody else.

We claim had these counts been joined originally as separate counts instead of separate indictments it would be objectionable because of multifariousness.

The Court: Is there now anybody associated with you in the case, Mr. Cahill, who was connected with the case at the time of the presentation to the grand jury?

Mr. Cahill: No, there isn't, your Honor, but I would like to make answer to some of these arguments.

The Court: Can you tell me why since the indictments were filed at the same time there were separate indictments instead of consolidating them into one indictment?

Mr. Cahill: I just don't know. As far as I can see they both could have been charged in the same indictment. I would like to say something first in regard to Senator Wheeler's statement about applying the act or acts here to legitimate labor activities: that, of course, the government is not doing in this case, and the acts charged in this indictment do not have to do with any legitimate labor activities. 458

The other counsel said that it should be apparent to your Honor from a reading of the indictments that the same facts are involved, and I accept that test. I do not ask the Court to give any extra worth to my word. I say to the Court that a reading of the indictments so discloses, and my learned friend's argument seems to go to his distaste of the averments in these indictments, which, as your Honor said, first, we are precluded from going into because, as we understand it, demurrers were made and overruled to these indictments.

Now, finally as to the objection to the consolidation of misdemeanor and felony indictments: I know of no objection in the law to that. In fact, if your Honor please, as I understand in the case of Anderson v. The United States in 101 Fed. (2d) 395 there was a conspiracy to obstruct 459 the mails, which is a felony, and a combination in restraint of trade, which is a misdemeanor under the Sherman Act, and the court in the Seventh Circuit held they were properly consolidated. The case I am told involved a strike in Illinois of the Progressive Mine Workers, and it was because of violence during the strike that the mails were obstructed, and the same acts went to prove both indict-

ments. It seems to me, your Honor, that that case is a fortiori authority for the motion pending presently before this Court.

The Court: Well, it seems to me that if there was a question as to which one of these indictments would be moved first, there would be some advantage to the defendants in the consolidation.

Mr. Cahill: Yes. And I will be just as frank as can be. Let me say, if the Court should find on reading these indictments that my judgment is correct, that they are similar in their facts, since the same facts go to prove both, why shouldn't both be tried, because at the conclusion of
461 my case, if your Honor should disagree with me on the law, the applicable law, as to either of these two indictments, or if later on, for example, an appellate court disagreed, why should we have to come back and try the same state of facts under the other indictment?

The Court: Do you intend to put in any evidence in this case and contend that it is not applicable to the other?

Mr. Cahill: I think not, your Honor. That is our present intention. The evidence will cover both indictments and will be admissible under both indictments.

Mr. Boudin: I think the matter is not properly a formal one but goes to substance. Very seriously, as I stated to your Honor, there are some cases in which because of the mere fact that one is a felony and the other is a misdemeanor it has been held not an objection to joining them,
462 but those were based on the language of the statute which says that they are of the same class. For instance, certain offenses under the Prohibition Act were misdemeanors while others were felonies, and it was then held they were of the same character and while one was a misdemeanor and the other a felony, like sale and possession, they might nevertheless be joined, because it is the same character of offense. And while I don't say that the decision in the Anderson case, with which I am familiar, was not exactly

correct—we will assume that it was correct—your Honor will recall, as stated by Mr. Cahill, that that was a case growing out of a particular strike. It was based on the language of the statute, which refers to the same transactions or acts, and furthermore they were of a similar nature; one was restraint of trade or interference with interstate commerce, and the other was interference with the United States mails. They were interferences with the movement of certain things: one was the mails and the other was commerce, and while they are covered by different statutes, they are of the same class of offense.

Now, we are coming down to our case: the offense charged under the Anti-Trust Act is entirely different in 464
character from the one in the Anti-Racketeering Act. One involves moral turpitude; the other does not. One may very well offend against the anti-trust law and without ceasing to be a gentleman, let us say, or a good citizen, even though he may have offended against the law. The other involves moral turpitude; it is a felony in the sense in which men usually use these terms. It is an offense in which no honest man would like to be charged with. It means the taking of money; it is the holding up of people; it is the equivalent of blackmail or extortion.

Now, it is hard to defend a conspiracy case, as your Honor knows, and the habit is current of permitting the Government to put in all kinds of testimony on the promise that they will connect it. Sometimes it is connected and
sometimes it is not connected, but in this case I am sure 465
that the Government does not intend to introduce evidence of two separate conspiracies. What will happen? A piece of evidence will be offered. Let us say that somebody has actually demanded money or attempted to extort money: we don't know under what conspiracy it comes in. No one knows what conspiracy will be finally proved or submitted to this jury. In the meantime everybody who is on trial is prejudiced by the fact that it is in the evidence

because on the theory of our law if there is a conspiracy, then everything done by every conspirator is binding on the others.

The Court: I don't subscribe to that. There must be established by the required measure of proof a separate conspiracy under every count.

Mr. Boudin: That is correct.

The Court: In both indictments.

Mr. Boudin: That is correct, your Honor. Now, if your Honor please, if you will rule now that they must establish a conspiracy first, I have no objection to trying both indictments because then we know, for instance, that they
467 are bound, but I am satisfied as to my client that no conspiracy under the anti-racketeering act can be established. But unless your Honor rules that they must establish a conspiracy first, my client will be prejudiced and the others will be prejudiced similarly. It is very serious to be on trial in this loose way under the anti-racketeering statute, and I stress, your Honor, the argument already made by Senator Wheeler concerning the highly prejudicial nature of a proceeding whereby people who are on trial under the Anti-Trust Act are also on trial under the Anti-Racketeering Act without separate conspiracies being established at the outset of the trial.

Mr. Cahill: If your Honor please, just one word: Unless I misunderstand counsel, counsel is contending for the novel proposition that a single conspiracy may not
468 violate more than one law of the United States. A single conspiracy may well violate both the Anti-Trust Act and the Anti-Racketeering Act, and whereas here these indictments charge physical violence in restraint of commerce, it seems to me that they are very similar, and I would say to your Honor if the Court has read these indictments, and I am sure if your Honor has read them your Honor has been impressed that the allegations are practically in the same words in the two of them. So on the question of identity

of the facts, which meets the test laid down by counsel that it should appear affirmatively from a reading of the indictments——

The Court: Mr. Cahill, I want to be sure I haven't misunderstood you.

Mr. Cahill: All right, Judge.

The Court: There are two statutes here.

Mr. Cahill: Yes.

The Court: The jury may find a conspiracy under the Sherman Anti-Trust Act, and upon precisely the same facts they may not find a conspiracy under the anti-racketeering statute.

Mr. Cahill: I agree. 470

The Court: Or they may find a verdict of guilty under both statutes or under the anti-racketeering statute as to certain counts and not as to others. Now, the proof in such case would all tend to establish the fact that there was one conspiracy, but it would be necessary for the jury to determine that the facts of that conspiracy made it a conspiracy under as many different statutes as there were transactions based upon this statute.

Mr. Cahill: That is correct. I absolutely agree. The reason I brought the point up was I have had prior arguments heretofore in this Court——

The Court: Well, upon the question of the extent to which the duty rests upon the prosecutor to establish the existence of the conspiracy before other proof is admitted, there is no standard about that that I can find. The rulings 471 of the courts is to open the door to that as wide as the farmer can make the door, depending upon the width of the barn.

I have always required that there must be some evidence establishing the conspiracy. That is in the mind of the Court and you can't photograph it. On the other hand I should be unwilling in any case to permit the introduction of testimony that would be incompetent under an

ordinary indictment and can only be admissible in a conspiracy case where it is specifically made so, unless I was reasonably satisfied that there was some showing that a conspiracy existed.

Now, sometimes it manifests itself in the proof only as to two people, two of the defendants in the case. In other words it might very readily and very promptly be established that A and B were in a conspiracy. Well, you couldn't withhold the offer of proof as to that conspiracy or acts in furtherance of it until it had been shown that that conspiracy existed as to all the other defendants down the alphabet to Z. It might be that that conspiracy would
473 be well under foot before other persons named as defendants became parties to it. Yet, if they became parties to it they would be just as much bound by it as those who instituted it.

Therefore I can't make a contract with you, Mr. Boudin, based upon your suggestion that you won't offer any objection to the consolidation if I hold that the district attorney will be held to his proof of first establishing the existence of a conspiracy. I guess there is too much room for disagreement between you and me with respect to when it is proper to ring the bell, so to speak, that the conspiracy has been sufficiently established and to allow evidence that wouldn't otherwise be admissible.

Mr. Boudin: I agree with your Honor as to the difficulty. That is exactly the point. What I said was that
474 were it possible to do so and if your Honor would so rule I might have no objection because my clients would then be protected against some of the prejudice that might arise from the trial of these indictments together.

The Court: Well, as I view the provisions of Section 557, unless the case itself presents specifically a legal objection, whether there will be a consolidation or not is wholly discretionary.

Mr. Boudin: No doubt about that.

The Court: And the question is whether if the Court in a given case allows a consolidation it might amount in effect to an abuse of discretion or be unduly prejudicial to the interests of the defendants.

Mr. Boudin: That is exactly what we are addressing ourselves to. No hard and fast rule could be laid down, of course, under the circumstances, and it is of necessity addressed to the discretion of the court. Of course, it is a judicial discretion and we are addressing ourselves to your Honor's discretion in this connection.

The Court: It is more or less a practical question rather than a legal question.

Mr. Boudin: Yes. And now, if your Honor please, here 476
is a very serious proposition as a matter of practical import: Your Honor knows very well, and I think the government would not deny the fact that we would be prejudiced in our case under the Anti-Trust Act by the introduction of evidence under the Anti-Racketeering Act. That stands to reason. It is no more the ordinary common sense, and no doubt they would be prejudiced under it. But I would like to call your Honor's attention to something else and that is this: it seems to me of necessity that this consolidation is excluded by the language of the statute because the same conspiracy could not support the two indictments. Now, Mr. Cahill said that it was news to him that where the same act is an offense under two statutes that they could not be indicted under the two statutes; that wasn't 477
my argument. My argument was not that at all. My argument was that in this case there is no proof before the Court that these two indictments are based on the same act and there must be some facts upon which your Honor could base a decision.

Now, furthermore it seems to me that the same conspiracy would not sustain the indictments under the two acts, and let me illustrate it by the law applicable to these different indictments. Your Honor knows very well that

the Anti-Trust Act, or a conspiracy under the Anti-Trust Act, is different from other conspiracies, in that no overt act is necessary. In other words, the moment people have agreed to restrain commerce, the offense has been committed even if they don't do anything else about it. That is clearly not true about the anti-racketeering statute.

The Court: You don't question, do you, that Congress had the right to eliminate from the Sherman Anti-Trust Act the specification of overt acts?

Mr. Boudin: Oh, I don't doubt it.

The Court: They are alleged in indictments under the provisions of Section 88 of the Criminal Code.

479 Mr. Boudin: I don't doubt that at all, and the United States Supreme Court in the Nash case, 229 U. S., has so held, and I think correctly so.

The Court: Then we have to start with the premise that an indictment such as has been returned here by the grand jury is authorized.

Mr. Boudin: Correct; but when it comes to trial the two are not in the same class because as to one the evidence that is necessary is in agreement, whereas as to the other there must be an act. That is the very point I am making. Under the one it is perfectly proper to return an indictment on the mere finding of an agreement without anything ever having been done thereunder, because of the peculiar nature of the offense, which puts it in a different class; it can't possibly be in the same class with the anti-racketeering statute, which is an offense of violence or extortion. That is the point I am making, and therefore I think it does not come within that language of Section 557.

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So under Section 557 in a proper case it is a matter of judicial discretion—at least I claim it is; I haven't consulted my associates on this matter; the two indictments in this case do not come within the language of 557 and therefore it is not merely a question of discretion but of legal right. So we appeal to your Honor's discretion, if

your Honor thinks it comes under Section 557, but we don't give up the contention that it does not come under Section 557, and that Section 557 does not authorize a consolidation of these two indictments.

The Court: Do you claim the overt act as charged in the indictment under Section 420 of the anti-racketeering statute——

Mr. Boudin: That also does not charge any overt act, but I think that is error. Every other indictment that I have seen under that statute does charge overt acts.

The Court: But they can.

Mr. Boudin: Yes. That is not before your Honor. I am not discussing that; that is not before your Honor. 482

The Court: The Court overruled the demurrer.

Mr. Boudin: That is correct; but at the same time the question of consolidation didn't come in.

The Court: But did you attack the sufficiency of the indictment upon the ground that it did not specify the overt acts.

Mr. Boudin: I did unsuccessfully, but while that decision to that extent is the law of the case, for the present, the rest is a new problem arising in a new form before your Honor and that is the question of consolidation as to the class of offenses, and I claim that these indictments cover offenses which are not of the same class.

The Court: Well, I will reserve decision.

Mr. Boudin: May we except for the present.

Mr. Aronstein: May the record show that the defendant Noonan makes the same objection to a consolidation of the indictments? 483

The Court: What is his position in the union?

Mr. Aronstein: He has no position in the union, no connection with it other than that the union that he represents is almost directly connected with the work done by teamsters.

The Court: Is he a member of Local 807?

Mr. Aronstein: No.

The Court: Then he is indicted as an individual?

Mr. Aronstein: He is.

The Court: Not connected by membership with the union.

Mr. Aronstein: That is true. Will your Honor have that noted?

The Court: Is that objection to consolidation?

Mr. Aronstein: Yes.

The Court: Or as to severance?

Mr. Aronstein: As to consolidation of the indictment.

485 The Court: I will reserve decision as to all defendants because I have already granted severance except as to five. Now, the question is whether the two indictments as they will remain so far as the identity of the defendants is concerned will be consolidated.

Mr. Cahill: I have another matter that should be brought to the Court's attention, the matter of withdrawals of pleas of guilty which have been entered here under the Sherman Act indictment by Campbell and Furey.

Mr. Murray: If your Honor please, the defendants Campbell and Furey move to be permitted to withdraw their pleas of guilty heretofore entered and to enter a plea of not guilty to the indictments.

The Court: Well, the clerk will call the names of those defendants.

486 (The clerk called the names of the defendants Campbell and Furey.)

The Court: Mr. Furey, you desire to withdraw your plea heretofore entered to indictment C-102-394 charging violation of the Sherman Anti-Trust Act and to C-102-395 charging violation of the anti-racketeering act and to enter a plea of not guilty?

Mr. Cahill: If I may interrupt, your Honor, there was no plea of guilty to 395; it is only to 394, the Sherman Act that he pleaded guilty, as I understand it.

The Court: Then I will ask the stenographer to modify my question accordingly.

Mr. Boudin: There has never been a plea of guilty on that.

The Court: It is only on the Sherman Act.

Mr. Cahill: Only on the Sherman Act.

Mr. Murray: The motion is granted to interpose a plea of not guilty?

The Court: Yes. Austin Furey, do you desire to withdraw your plea of guilty that you entered to indictment C-102-394 to the Sherman Anti-Trust Act and enter a plea of not guilty?

The Defendant Furey: Yes. 488

The Court: Motion granted.

The Court: Now, Mr. Murray, of course, these defendants had a standing here so far as the anti-racketeering indictment was concerned, but they had no standing until this motion was made with respect to the other indictment. And if they had any objection to the motion heretofore made for a severance, for the purpose of the record it may be made.

Mr. Murray: Well, as to that, in behalf of the two defendants who just pleaded not guilty, I still raise the objection to the severance in behalf of the officers of the union.

The Court: What office do they hold?

Mr. Murray: Campbell and Furey were delegates.

The Court: But the motion is not to sever as to them. 489

Mr. Murray: No, your Honor, except——

The Court: Their objection is, or they object to the severence as against the other defendants?

Mr. Murray: They object to the severance so far as the officials of the union are concerned.

The Court: These are the five defendants.

Mr. Murray: Yes, your Honor, unless they are included in the severance as officials of the union.

The Court: Well, are they indicted individually and as officials of the union?

Mr. Murray: No; they are all indicted individually, if your Honor please.

The Court: I understand.

Mr. Cahill: Your Honor, the next matter I wish to call to the Court's attention is the vacating of the consent decree. We sent a copy of the proposed order which we have here to the defense counsel on Saturday morning and we would like to know if there is objection to submitting it to your Honor.

Mr. Boudin: There is no objection.

491 Mr. Maguire: No objection.

The Court: Are there any other preliminary questions?

Mr. Cahill: We have nothing further, your Honor.

The Court: Have any of the defendants any other preliminary questions or motions?

(No response.)

The Court: Well, I think at this point we will take a recess and I would like to confer with counsel in chambers.

Mr. Cahill: If I might say this on the length of the recess. I have just been given a note that the Circuit Court of Appeals will reach the appeal in the Browder case at 12 o'clock, and if your Honor could adjourn from now until 2——

The Court: I was going to suggest that. I would like to have a discussion with you, and I would like to have 492 that time to consider those questions on which I reserved decision.

Mr. Murray: Would your Honor bear with me? I am cognizant of what your Honor said about the terms of the jurors expiring and the fact that a new jury panel comes in to-morrow. If it meets with your Honor's approval I would like to have these preliminaries decided and then if possible have the case adjourned until to-morrow morning until your Honor gets a new jury panel.

The Court: That is one of the things I am proposing to take up in this conference. I want the jury clerk to come in with us, because I am not proposing to do anything myself that will, in the vernacular, thrown a monkey wrench into the machinery or upset the regular order of the procedure of this Court, because there are other judges whose activities in that event might be interferred with.

Mr. Murray: Your Honor, I didn't know that that was in your mind; that is why I made the suggestion.

The Court: Well, we will take a recess in this case until 2 o'clock. Counsel will come into chambers.

(Recess to 2 o'clock P. M.) 494

AFTERNOON SESSION—2 P. M.

Mr. Maguire: If your Honor please, before there is any decision rendered on the matter before you, may we have it made clear in the record that the objections made by defendant's counsel inure to the benefit of all defendants?

The Court: Yes.

Mr. Boudin: Objections and exceptions.

The Court: Well, there are no exceptions yet, are there? The motions for severance as to the defendants Hickey, Clarke, Devery, Brennan and Flaherty, being officers of Local 807, are denied. The motion to consolidate is granted. 495

Mr. Boudin: Exception, if your Honor please.

Mr. Cahill: May I before your Honor speaks say this: In the light of your Honor's ruling I move to dismiss as to those defendants with respect to whom the Court has denied the motion to sever.

The Court: I don't suppose there is any objection to that.

Mr. Boudin: No objection to that.

The Court: Motion granted. Now, those five defendants may step out of their places.

(Discussion off the record.)

(The Court directed the clerk to call the names of the defendants. The defendant Robert Dillon did not respond.)

Mr. Murray: If your Honor please, we have sent a letter to Dillon's address which has been returned unopened. As to his present whereabouts I am not aware.

Mr. Cahill: I move that the bail be forfeited and a bench warrant issued.

The Court: Is it a surety bond or an individual bond?

497 Mr. Cahill: A surety bond I understand, your Honor.

The Court: Motion granted.

(The roll of the defendants was continued and completed.)

Mr. Murray: Your Honor, I am advised that members of the union are in the hope of locating Dillon this afternoon. They think he has gone to live with his father. May I ask your Honor to withhold the entry of bail forfeiture until to-morrow morning?

The Court: No; but if he is produced here to-morrow morning there won't be any serious consequences so far as bail forfeiture is concerned.

Mr. Aronstein: Your Honor, some time previous to this I noticed the clerk of this court that the name of my de-
498 fendant is Cornelius J. Noonan and that the record should be changed accordingly.

The Court: We will change it now in order to make it correct. The clerk will be so instructed.

(The examination and impaneling of the jury was begun and an adjournment was taken to April 16, 1940.)

New York, April 16, 1940.

TRIAL RESUMED.

(A jury of twelve and two alternates were duly impaneled and sworn.)

The Court: Members of the jury, an opportunity will now be afforded to both the United States Attorney on behalf of the Government and counsel for all of the defendants to outline to you what this case is about. I emphasize now that you are to distinguish between what counsel say in their respective openings, as we will call them, and what the proof is. Whatever may be said by anybody is not evidence unless it is said by a witness on the witness stand. So you will carefully differentiate between the proof in the case as it is developed during the course of the trial and what anybody may say in outlining to you the facts with respect to the nature of this action. The United States Attorney, Mr. Cahill, and each of the counsel for the defendants may have as much time as they feel they need, but in so far as the defendant Noonan is concerned, he not being a member of the defendant union, I will permit his counsel if he so desires to reserve his opening until the close of the Government's case. 500

The Court recognizes Mr. Cahill, the United States Attorney.

GOVERNMENT'S OPENING. 501

Mr. Cahill: May it please the Court, Mr. Foreman and ladies and gentlemen of the jury: As his Honor has told you, at the outset of every criminal trial it becomes the duty of the United States Attorney on behalf of the United States to describe to the members of the jury the nature of the charge or accusation on which the defendants are now about to be put on trial, and under which testimony will be offered against them by the Government.

The charges or accusations in this case, as in all cases, are brought in the form of an indictment returned by a grand jury of this district. As the Court has indicated to you on your examination, the indictment or indictments themselves have absolutely no probative value and they are merely in the nature of a charge designed to apprise the defendants of what they must face.

Eloquence and oratory have no place in an opening, nor is an opening the place for the Government to try its case. The purpose is merely to outline the charge and therefore to outline the issues under which the Government will offer proof, and I intend to adhere to that purpose.

Still further, in preliminary fashion: In our system of law the Court, and he alone, tells the jury what the law is, and if I or anybody else in this case at any time make any reference to the law in our openings, that is not with the intention of invading the exclusive province of the Court, but merely to clarify what we have to say about the facts in this case.

Still further, if anybody says anything either now or later that is, any lawyer, which is not borne out by the facts, as his Honor has told you, what we lawyers have to say is not evidence, and I on behalf of the Government want you to get your evidence solely and only from what the witnesses say after they are sworn, and if at any time, either now or later, I or anybody else should say that a witness said something where your recollection differs as to what that witness said, let your recollection control and not mine.

Before going into the matters alleged in the indictment I should like to introduce at this time the men who are sitting at the Government's table: The first gentleman is Mr. Ennis, an Assistant United States Attorney. Next to him is Mr. Marks; next to him is Mr. Burling; Assistant

505

United States Attorneys. The gentleman over there (indicating) is Mr. Donald Kennedy of the Federal Bureau of Investigation.

There are two indictments here. One indictment alleges the violation of the Sherman Act. The other indictment alleges the violation of the Anti-Racketeering Act. The defendants in both indictments are the same. They include Local 807 of the Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, and in addition thirty-five individual members of that union and one further individual defendant is not a member of Local 807. That last defendant is Cornelius J. Noonan. Mr. Noonan is the president of the Platform Workers Union. The 506
members of the Platform Workers Union unload the merchandise which has been transported by the Teamsters Union.

These two indictments charge that from on or about December 1, 1936, up to the date of the indictments themselves, and those dates are in both cases May 31, 1938, a conspiracy has existed between the defendants on trial to violate the laws of the United States to which I have referred.

The indictments set forth that for many years last past a substantial part of the trade and commerce among the several States of the United States has consisted in the transportation and shipment by so-called over-the-road trucks of general merchandise and food, and we will refer 507
to the general merchandise and foodstuffs as we go along under the collective term of merchandise. The interstate feature includes commerce between this State and the several States, but more particularly, the proof in this case will be concerned with interstate traffic among the following States coming into this State, namely, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina and Virginia; commerce originating in any one of those States and being transported in these

over-the-road trucks into the State of New York, the City of New York, into the Southern District of New York in which we now sit.

The indictments further allege that during this period from December 1, 1936, to May 31, 1938, a large number of persons, firms and corporations known in the trucking industry as shippers have engaged in the making of contracts and agreements with other persons, firms or corporations known to the trucking trade as consignees. These contracts are either for the sale of merchandise through the consignees or for the sale of merchandise by the consignees for the accounts of the shippers.

509 The indictments continue: That the shippers have caused the transportation of this merchandise by these interstate so-called over-the-road motor trucks from other States into this State and that after arriving in this city and delivering the loads these trucks brought, that the trucks have again in this city picked up merchandise for the return trip into other States, again starting a journey in interstate commerce. The amount of merchandise thus transported is set at the value of a billion dollars a year, and I stress the fact that it is a billion with a "b," because later on we will talk of a different figure which begins with an "m," but the indictments say the value of this merchandise transported in these over-the-road trucks is equal to one billion dollars per year.

510 The indictment further tells us that this Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers is a national association, under the laws of the State of New York, and having its principal place of business on Varick Street in the City of New York. Now, the location of the union office on Varick Street is so placed as to command a view of the exit from the Holland Tunnel, about which there will be considerable testimony in this case, because a great number of these

interstate or so-called over-the-road trucks enter New York City via the Holland Tunnel.

Now, in cases where we have so many defendants as we do here, I have found from experience that it is very confusing to the jury to attempt in an opening to detail the part that each individual defendant in this large group played or will be shown to have played by the evidence, because it is impossible for you at this time to know the identity of any of them, and if I were to go into a detailed statement as to each and every one, by the time I had finished, if you had any recollection at all as to what I had said, it would be a very confusing recollection, and you might be holding against one man what I said in 512
respect to another. So in order to adhere to my purpose I will continue and talk with you as to the proof we expect to put in which will affect all of the defendants. There will be particular proof that will affect only certain of them. That we can take as the evidence itself goes in. I might say, however, that in respect of two of the defendants I think you can keep these things in mind: William Campbell and Austin Furey. Those two men, William Campbell and Austin Furey, together with others, were at the time of this indictment and during the period of the conspiracy alleged in the indictment delegates or business representatives of this Local 807. Delegates Campbell and Furey had jurisdiction for the local over the west side of the Borough of Manhattan, about which 513
location a large part of our proof will have to do.

The indictment charges that the conspirators unlawfully and feloniously acted in concert with each other, and at this point I will quote the exact language of the indictment. This is the quotation: "To obtain the payment of money and of other valuable considerations from the said shippers, owners, operators and drivers of said over-the-road motor trucks and their helpers by the use of, attempt to use and threat to use, force, violence and

coercion in connection with and in relation to acts directly affecting interstate trade and commerce and articles and commodities moving in interstate trade and commerce."

You will note there that the indictment charges that the conspirators got together to obtain this payment of money not only from the shippers and owners, but, as well, from the drivers and helpers on these over-the-road trucks.

The indictment goes on further to describe the particulars of the conspiracy. It sets forth that as a part of this conspiracy to coerce the shippers and the drivers as well of these over-the-road trucks the defendants con-
515 spired to cause these people to pay in this city the sum of $9.42 for each large truck and $8.41 for each small truck for transporting merchandise from States other than New York into New York City. The indictment says that these sums aggregated more than $1,000,000 a year, and there we use the million with an "m" in contrast to the value of the merchandise so transported which, as I told you, was a billion dollars.

The indictment goes on to say, and our proof will show, that the coercion and compulsion I have referred to were exercised in the following ways: First, by preventing the owners and drivers of these over-the-road trucks and their helpers from delivering or unloading this interstate merchandise at the places of business of the consignees here in New York City, and also picking up by the drivers or
516 by their helpers of return loads back from New York City to the points of origin. The next method of coercing and compelling these people is alleged to be the preventing of the consignees from accepting the delivery of the merchandise transported in interstate commerce. The third is the coercing of the drivers and their helpers, that is, the drivers and helpers who were on the trucks at the time it originated outside the State, by compelling those drivers and helpers to turn over their trucks and the mer-

chandise contained in the trucks, of course, to members of the defendant Local 807 upon arrival in the City of New York, and coercing the drivers and helpers who had driven the trucks from the out of State points into New York City into permitting the members of Local 807 exclusively to conduct those trucks to the consignees within the City of New York; and further, of course, coercing and compelling those interstate drivers and their helpers to turn over the trucks again in respect of the return trip until the interstate trucks got outside the limits of New York City.

The indictment charges again that it was part of the conspiracy to compel the payment of the money I have 518
referred to, $9.42 and $8.41, by the shippers, operators and the drivers of the trucks, and here again I quote: "Entirely regardless of whether or not any services have been or are to be rendered therefor and entirely regardless of whether or not said drivers and their helpers have been or are members in good standing of a labor union in their respective states of origin." Now, I emphasized the last part because our proof will show that many of these drivers who were compelled to get down and turn over their trucks were themselves union men and were, in fact, in many cases members of the same International as this Local 807, but although they were union men in good standing of the same International of the American Federation of Labor, the indictment alleges that these men
were made to get down from their trucks when they were 519
brought into the City of New York and turn them over to the members of this local for conduct to the place of business of the consignees. The indictment continues in that regard and again I will quote:

"That in most instances little or no service whatsoever has been rendered by conspirators or by any of them in consideration for said money and that the drivers of said over-the-road motor trucks and their helpers not only have

been members in good standing of a labor union in their respective states of origin but have been members in good standing of another local of the same international union of the American Federation of Labor with which the defendant union has been affiliated, namely, International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America."

And continuing still further the indictment says, and again I quote: "In most instances the services, if any, rendered by the members of defendant union have been of relatively short duration and of a negligent and careless nature frequently resulting in substantial damage to the
521 trucks, the merchandise contained therein and to the good will of the shippers' business."

The indictment still further says that in many instances these conspirators have coerced and compelled the shippers, the owners and the operators to enter into contracts with this Local 807 providing for the employment or continued employment at unreasonable and excessive rates of an arbitrary and unwanted number of members of the defendant union 807.

In this connection the indictment says, quoting: "In many instances, the members of defendant union whom shippers have been coerced or compelled to employ or to keep employed, have been individuals of bad repute who have had little or no experience in driving or unloading trucks and who have been otherwise incompetent and
522 irresponsible."

It is charged further that the services so compelled were not useful to the shippers nor to the consignees because the transportation, loading, unloading of the trucks could as well have been done by the drivers and their helpers, many of them union men, members of the same international union; that is, the men who had driven the trucks from the points without the State into this State.

The indictment further charges that by reason of this abuse by the defendant Local 807 these drivers who brought the trucks into the city were compelled themselves to stay idle while the trucks were here because of the demand of this local that their men exclusively be allowed to drive these interstate trucks while they were within the city.

The indictment tells us still further that unless the coercion and compulsion imposed by these conspirators are accepted by the shippers and by the drivers from outside the city, that those people are prevented and restrained by these defendants from selling, transporting, delivering or receiving merchandise in interstate commerce, and that because of this restraint those who operate these trucks have been unable to continue their business and many of them have been obliged to go out of business entirely. 524

The indictment says that the cost of this restraint by this local has been added to the price of the foodstuffs that have been transported in interstate commerce and that the added cost has been paid by the ultimate consumer of the foodstuffs.

Now as to the means whereby this coercion was made effective: Specifically it is alleged that persons known to these conspirators and to persons engaged in the trucking business to be gangsters, and I quote the word gangsters and gorillas, and I again quote the word gorillas, were employed for the purpose of carrying out what I have described up until now, and for the purpose of threatening, beating up and assaulting persons owning or operating these interstate trucks, and that will include in some instances union drivers in good standing in their cities of origin, members of the same international union as this particular local. 525

The indictment tells us further that violence was resorted to for the purpose of creating in the industry and

in the minds of persons engaged in the industry a feeling of fear and terror for the purpose of preventing persons from resisting the operation of the conspiracy described herein. Our proof will show in this trial that physical violence was threatened and used against persons owning or operating these interstate trucks, going so far as to include visits by these gorillas or gangsters hired here in the City of New York by these defendant conspirators to the homes of owners or operators of these trucks at out of the state points. Mind you, these gangsters or gorillas would get into their cars here and drive out to Jersey, Pennsylvania or wherever these owners or operators lived, visit
527 them at their homes and threaten them with violence if they persisted in following their legitimate business.

We charge further, and it is set forth in the indictment, and we will prove, that there was a forceful detaining and threats to the merchandise contained in these trucks and that damage was done to the cargo carried in these trucks where they did not comply; and that right here in the City of New York shippers and drivers, some of them union drivers, in places where there were unions at the point of origin, were assaulted and beaten up; that there was a forceful preventing of these men from making their deliveries or pick-ups; and that there was a following and spying by these defendants upon these over-the-road trucks and upon their drivers and their helpers, and that not only were there threats and violence and brutality and punish-
528 ment to these drivers, but there were boycotts and refusals to load.

The indictment charges, and we will prove, that there were riotous assemblies and threatening gatherings staged near the places of business of the consignees.

I have given you enough of the allegations and of the proof that we will offer in support of those allegations to cover the first count of the entire racketeering indictment. The anti-racketeering indictment is in four counts and sets

up the provisions of the various sections of that act as having been violated.

As to the Sherman Act indictment, substantially the same facts are alleged in that indictment as I have described to you already. The Sherman Act indictment is in one count. In conclusion I want to make it entirely clear to each and every one of you that we are not in any way challenging or contravening the right of labor to bargain collectively. That is not an issue in this case. Our proof here will have nothing to do with attempts to organize non-union employes. Our proof and our issues have nothing whatsoever to do with attempts to better the wage scale or conditions of work. This is not a strike situation, in re 530
bettering conditions of the laboring man, in re the rate of pay, in re the hours of wages. Our proof will have to do with interference by violence, with threats to commerce by union men of this New York City Local 807, to union men of the same international union but from locals in other states, and with the damage and loss to our trade and commerce incident to that interference and with the insistence by this New York local, notwithstanding the fact that these interstate trucks were in many instances being driven by union men, that those trucks be driven in the City of New York only by members of Local 807, and that those other drivers, union men themselves, would have to step down, turn over their trucks, and be idle in order to allow the 807 men to drive those trucks within the City of New York.

Now that in summary is our case. We want to be fair 531
ourselves; we want you to be fair. We know you will be. As his Honor told you, the case will take about a month to try. Don't make up your minds on what I say or on what other counsel say or on what any witness says or any series of witnesses. This is a trial under the American system, and let us keep our minds open to the truth until you have heard every bit of it. Thank you.

The Court: Mr. Edward C. Maguire, attorney for Local 807 and the individual defendant Eli Pollock.

OPENINGS ON BEHALF OF DEFENDANTS.

Mr. Maguire: May it please the Court, Mr. Foreman and Ladies and Gentlemen: I am opening now on behalf of the union itself, Local 807. You have heard Mr. Cahill generally describe that which is actually contained in the indictment. Other than those general claims and general charges we have no information whatsoever.

At the outset I think I can say without any question that after you have heard this evidence, after the case is closed, that you certainly will be convinced that this union never participated in, never approved of, never aided or abetted in the commission of any acts of violence.

533 It is desirable so that you may receive the evidence with a knowledge of what this over-the-road trucking situation is and just what this union stands for and what it is, that we briefly review this over-the-road trucking situation and its relation to Local 807. Now Local 807 is not a fly-by-night, built overnight labor union. It is an organization that has been chartered and in existence in the City of New York for more than 25 years. It is chartered by and was chartered by and continues to be affiliated with the International Brotherhood of Teamsters, an affiliate of the American Federation of Labor. It lists in its members drivers and helpers on trucks. The membership of Local 807 exceeds 8000. That has been so, substantially, for many years past.

534 Twelve or fifteen years ago there wasn't any such thing as over-the-road trucking. In any event, whatever there may have been of it was negligible. At that time and by that time, we will say, in 1925 to 1928, after a long struggle the union had attained in New York City for its members through collective bargaining, collective action, including strikes, a perfectly proper thing to engage in, certain wages, certain hours and certain working conditions. Then came the over-the-road system. Prior to that time, you

must understand how freight or merchandise, if you will, was normally and regularly transported into and out of New York. We will take, for example, a concern in Boston, a manufacturer that shipped merchandise to New York: The system then in vogue was this: That the manufacturer would load a truck up in Boston. The merchandise would be taken to the freight yard and loaded into a freight car. The railroad would transport it to New York, and from the freight yard in New York the merchandise would be delivered to the consignee. The man who did that work was a truckdriver in the City of New York. That is, he took the merchandise from the freight yard here to the consignee's place of business. And so, too, the manufacturers 536
here and the merchants here, shipping to other parts of the country, would use the trucks that were owned and operated here in the city to bring the merchandise to the freight car, load it and send it off by railroad.

Over-the-road trucking suddenly took a very active form. It was as if somebody had discovered a gold mine. It was a new idea and clicked, and we found that in the last 10 or 12 years—I recall these figures specifically, and we will show you these things, ladies and gentlemen: We will take in one particular commodity alone where in 1928, 90 or 95 per cent of this commodity was brought into New York through the use of railroads, by 1935 40 per cent of it was brought in by over-the-road trucks.

Don't get for a moment the idea that the union or the 537
members of the union in the City of New York wanted to stand in the way of progress. They know they can't; they bow to it, and they are perfectly willing to encourage a new industry that may be and probably is a more efficient industry, but when this new giant started and was raising itself, what conditions did we find? Again I will give you an example, and these things we will prove: In the early years of 1931 or 1932, around that, there was a good deal of merchandise trucked over-the-road from Boston to New

York. We will take that as an example. Here was the operation: At that time many of these places outside of the City of New York were not organized. That is, their drivers and helpers on the trucks outside of the city were not members of any union. This truck owner in Boston would have a driver and a helper and he would send that driver and helper to his various customers in Boston to pick up merchandise for the trip to New York. It was nothing unusual for three or four or five hours to be spent by these men making the pickups before they even left Boston to start for New York. Then they would start off in the evening usually around seven or eight o'clock and
539 they would ride overnight, landing in the outskirts of the city possibly at 7 o'clock in the morning. Then what would they do? They would go to the various consignees. Possibly they would have a half-dozen, possibly a dozen deliveries on a particular truck. They would go around and make these deliveries, and you would find that probably more than a half day would have elapsed just in the making of those deliveries. Then, here is something that you will find that you will have to accept when you hear the facts: That this over-the-road operation cannot be sound economically and financially unless there is a return load. In the nature of things they just can't have a truck going one way loaded and then back empty. They have got to be paid for each part of the operation. There thereupon started around brokers and the like of that. Customers
540 had been solicited, and they would go about the city making their pickups and then at 6 or 7 o'clock at night they would start off back to Boston.

Ladies and gentlemen, 36 to 40 hours at a stretch on that truck was not exceptional; it was the rule. We will take a near point, Philadelphia, and we will give you the operation there as it was in those days. In Philadelphia we find the men spent three or four or five hours getting the load together, assembling it; then they would start.

off to New York, I think a distance of 92 miles. It would take them five hours. The equipment of the early 30's wasn't as fast or as efficient as the equipment at the present time; the last year or two especially it has improved. They too would do about a full day's work around the city, making deliveries, making pickups and then start back again, five or six hours for the trip. Twenty hours was nothing for these men to be on the road; twenty hours at a stretch.

Sensible, decent men who were engaged in the over-the-road trucking line saw that that was a condition that no industry could build itself on. You couldn't expect to have a sound healthy industry at the cost of men working 20 to 36 hours at a stretch. You may have heard, of course, 542
of the many accidents that occurred under those conditions. It was a public menace. Some, as I say, far-sighted employers did begin to reform this situation themselves, and it is very interesting to see what happened where a decent-minded employer started to put the thing on a sound basis with due consideration for the rights of people. Eighteen to 20 hours was the old trip involving Philadelphia. Here is the operation at the time of the indictment, brought about by the adoption of reasonably efficient methods by employers. What happened: In Philadelphia they have what they call a mosquito fleet, smaller trucks. Those trucks go about the city and assemble the loads at a terminal. Those loads are placed on these big trucks that you see now and then going through our city loaded. Then a specialist came on the job, an over-the-road man, and 543
that over-the-road man got his trucks driving from Philadelphia to New York in approximately four to four and a half hours and got off and had his luncheon. They usually do this at night. He would start out at approximately 8 or 9 o'clock at night. They have what they call a horse; it is a tractor. That hooks on to the truck; it is also called the trailer. They bring the tractor over to another trailer already loaded, the loading having been assembled in the

City of New York by a mosquito fleet here. Back he would go for another four or four and a half hours. That man, the over-the-road operator, having worked that night, when he gets to Philadelphia he just gets off his truck; his job is done. He has an eight-hour day or an eight and a half hour day, and that man is paid a decent wage.

Now here is the operation of a decent employer from Boston today: That employer too has a mosquito fleet. The load is assembled and put on the truck. The truck comes down over the road at night. I think it will be found that these truckdrivers drive about nine to nine and a half hours just over the road. They don't do any city work on either end. When they get here the truck is turned over 545 to the city terminal, the city operator who goes about making the distribution and the pickups, and then the following night, the man having slept throughout the day and got some necessary rest to make him a safe driver on our public roads, that man then goes back the following night.

Now what happens here? What kind of people are you going to hear on the stand, as we envision it? I think you will find, and we hope to do this out of their own books and records, that the chiseler, the man that does not respect the laws of the land or the laws of decency, who has tried to keep his business going on the strength of keeping people working—and what amused me very much in the indictment, one of them, was this: It says in effect 546 that these people who have complained to the government would like to bring back the good old days. Now as far as I can see the good old days on the Boston run were 35 to 40 hours at a stretch. The good old days on the Philadelphia run were 18 to 20 hours at a stretch. Bring back the good old days for those employers.

Where was the government between 1925 and 1935? There was no legislation, Federal legislation designed to protect these men that were being worked countless hours,

who were wrecked physically on the road, and it wasn't until 1935 that the Congress of the United States saw the absolute necessity of taking this new-grown monster into control and regulating him, and in 1935 the Motor Vehicle and the Motor Carrier Act was enacted into law and a regulatory power put into the hands of the Interstate Commerce Commission.

Where were our various states in those days? Well, beginning in the late 20's, right up to now, the states started to get busy putting into effect laws limiting the number of hours that a man might drive on the roads of the states. Jersey put a law into effect, I think, in 1935. New York had it for a number of years before that, but 548
in any event, there was absolutely no enforcement of those laws so far as the chiseler was concerned.

Now it is interesting in that connection to tell you what we will establish: How the chiseler gets around the state laws, did get around them in the period of this so-called conspiracy. The various states have printed cards and each truckdriver is supposed to take that card and he is supposed to fill it out as to the time that he entered the state, the particular state. He is also supposed to show on that card how long he has been driving before that, and then after he drives the time limit he is supposed to stop and get an adequate, proper rest. Now, here is the scheme that was adopted, and we will prove this particularly. It was a very simple thing. Instead of the truckdriver taking one card he would take two cards. This is the over-the-road 549
fellow. He would comply with the first card, but as soon as the time period was up he would just tear that up and start writing up a new card as if he had just come off his rest period. What was the effect of this development on the over-the-road trucking and on the drivers in the City of New York? What was the reaction? Well, it developed, you can readily see, there was less truck work from the freight yards to the consignee's store. There was less

truck work from the consignee's store to the freight yards. Men were thrown out of work by the hundreds—by the thousands. Then what else did we find?

In 1938 and for the two years prior thereto the union had obtained certain conditions and had contracts with the employers. The contracts called for wages. For example, on one-ton assembly, the wages called for under the contracts were $44 a week; two tons, $45, and so on up, because it is recognized the heavier the truck the higher the pay is or more warranted.

Now don't be led into the belief that these truckdrivers went home on Saturday night with anywhere from $44 to
551 $55 or $50; that wasn't the nature of this industry. These men were lucky if they got one, two or three days. That is average one would work a week. $9.42—I haven't figured it out, but I think it did represent a day's pay. At the wage rate that existed then if a man went home with one or two or three days' pay at the end of a week he would be lucky; that is, a truckdriver in the City of New York. Now then, this unemployment was created. Hundreds and thousands were thrown out of work and then we found these men, and they were mostly unorganized and not members of the union, coming in and actually doing a full day's work here in the city, doing a full day's work in the city after they had done more than a full day's work from the night before, and doing a full day's work in the city, they had to do another full day's work over the follow-
552 ing night, and the union did make efforts to organize these drivers. Strikes were called, but I can tell you this: That the union did not countenance or take part in or approve of any violence or the like of that.

Now the fact that these men were in here doing the work had this effect: Let us consider who these men were who were driving from out of town over-the-road. We will say that they came from Wilmington, Delaware. It is interesting to note, and we will prove it, that the average wage of

these people coming in from out of town driving these trucks in those days was around $18 a week. Men working 80 or 90 hours a week. As I have outlined, $15 or $18 was the common wage. Here is a partial survey of those things (indicating). A Pennsylvania driver, $18 a week, a Maryland driver, $10 a week plus meals. That is the condition that we were confronted with. Those men came in and naturally they were directly competing for the work of our city people, and what else was happening? 553

These unemployed men, having been absorbed for the benefit of the gentleman from Delaware who was working for an employer without conscience, the City of New York, you, ladies and gentlemen had to help support those men. They were thrown out of work. They were put on relief. 554

Now I don't know that it is going to contribute anything by my going into the thing any further. I wanted you to get the background of this situation. I wanted you to realize that a man is entitled to a day's pay for a day's work. A man who holds himself available and works and does hard work in this truck gets $9.42 for that day's work. It is not a fortune. You want to realize that these trucks carry 12 or 15 tons of merchandise. It is a tremendous job.

With Mr. Cahill, we don't want any favor. We want you to be fair-minded. We want you to be open-minded. I regret that in this situation which is truly an economic problem, the solution has to be sought in a criminal courtroom. I don't think it is the place for it. It is an economic problem that should have a different approach, but unfortunately it is the way the thing is being sought to be solved. We ask that you reserve your judgment until you listen to the testimony of all the witnesses, and when you hear the testimony of the witnesses for the government, listen to them in the light of what I have told you as to the type of employer generally that will be represented here. Thank you. 555

The Court: Mr. James D. C. Murray, representing William Campbell and 32 other defendants.

Mr. Murray: With your Honor's permission, Mr. Foreman and Ladies and Gentlemen of the Jury: I don't know whether I am warranted at all in making what is commonly called an opening because after listening to the opening of the learned District Attorney, I don't know yet what my men who sit over there opposite you have done. As you will remember, his Honor in selecting you yesterday and today, told you that we did not have to offer any proof to exculpate ourselves; the burden is on the government, and by the same token, I as counsel
557 for these men do not have to stand up here and offer to prove anything, and I say again I am at a loss to know what I have to meet because I have heard only generalities.

Ladies and gentlemen, I appear for these men, 30 or more of them that you see sitting over there on the other side of the courtroom. As you observe them, it might seem grotesque to you to hear the learned District Attorney talk about billions of dollars and millions of dollars. Those men, I will prove to you, are nothing but hewers of wood and drawers of water. They are the every day laborer you find in New York who in an honest legitimate way are trying to earn a living to support a wife and children. Of course, they sought work, but they sought it in a legitimate manner. As they understood it, it was their right to do it.

558 I will prove to you ladies and gentlemen that these men are not racketeers or gangsters, that they are men who went out in the morning to work with a union card in their pockets, and they paid their dues in a legitimate union and that the work they sought they understood, not only under State laws but under Federal laws, to be a proper procedure on their part. Now that is about all I can say in view of the lack of facts or the lack of offered proof against these men.

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I just want you to bear in mind that when the time comes, if it be necessary to introduce a defense on behalf of these men who sit over there, dressed as they are in their working clothes as you see them with their calloused hands, I will show you that these men did nothing that they didn't have a right to do, and I want to urge on you that I will prove that these men were union men for a number of years and worked only as union men and not as racketeers and not as gangsters. And I will prove to you that if any of these men who sit opposite you now, some of whom are so poorly dressed, that if they committed any of the crimes that the learned United States Attorney claims they committed, there was an adequate police force in the City of New York and an adequate prosecuting agency within this State to apprehend them and charge them with the commission of those crimes. But I will prove to you, on the contrary, that it is very rare, and I don't know of any instance where those men have complained who claim so loudly and bitterly and who are to take the stand in this court that their rights were invaded. I will prove that there never was a prosecution right here in this State, where it belonged, if these men did commit any of the crimes charged. Now I ask you to just keep your minds open until finally this case is closed by his Honor's charge. I am going to ask you when you hear all of the evidence in this case to acquit these working men.

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The Court: Mr. Louis B. Boudin is associated with Mr. Maguire in the defense of the union, Local 807, and like Mr. Maguire, represents one additional defendant, individually defendant, the defendant Powers.

Do you desire to be heard on behalf of that defendant?

Mr. Boudin: I would like to say just a few words in opening, if your Honor please.

The Court: Yes.

Mr. Boudin: May it please the Court, Mr. Foreman and Ladies and Gentlemen of the Jury: I think there is very little that I can add to what has already been said in the opening or the little that was said by counsel, because as Mr. Murray very correctly pointed out, the government hasn't said anything about the facts. They have told you, it is true, that gangsters were employed by this union. Frankly, I would like to know what they are going to prove those gangsters were employed for. It doesn't seem to me possible to prove that gangsters were employed in order to get $9.42 from somebody even if it was a full day's work.

563 Now I want you to remember one or two things in the course of the testimony as it will be presented to you because the purpose of any opening is merely to help you follow the testimony as it is being presented. Unfortunately, the government not having stated what facts it is going to prove to you, we must only caution you against certain things so that you will not be confused by the charges read to you in the indictment, and therefore I only want to say to you this:

I am going to prove to you both with respect to the Anti-Racketeering Act as well as the Anti-Trust Act that there is nothing that either the union, or as far as I know, the individual defendants have done that offends that law. Now I don't represent the individual defendants.

564 Most of my individual defendants are out. I represent prima facie the union, but as Mr. Murray has told you, if any individual has offended against any of the criminal laws, why, the State takes care of that, and the Court will tell you so. The Court will charge you, and I think the District Attorney very frankly told you that the only thing before you is not what may have offended against any kind of law but against certain particular laws. Because of the nature of these laws I would like to comment

on them for a moment so you may be in a better position to follow the testimony that is presented to you.

Now there are two laws involved. There were originally two indictments. There were consolidated for the purpose of this trial. One is known as the Anti-Racketeering Act, which is a comparatively recent act, and one is known as the Anti-Trust Act, which is an old law. I will commence with the old law, the Anti-Trust Act, so-called Sherman Anti-Trust Law which was adopted July 2, 1890——

The Court: Mr. Boudin, I don't think you need go into the history of either the Sherman Act or the later passage. After all, what the jury are primarily concerned with in this case are the facts. 566

Mr. Boudin: Yes.

The Court: And the Court will instruct them on the law at the proper time.

Mr. Boudin: Well, I just wanted to tell them what we are going to prove. As a preliminary, I was going to state what the law——

The Court: No. You may say what you intend to prove, but so far as the law is concerned, if the jury need any instruction, the Court will give it to them.

Mr. Boudin: Well, I will say then very briefly, ladies and gentlemen, that I shall prove to you that Local 807 is not a trust. I say by the time the evidence is presented to you you will be satisfied that it was not a trust and was not engaged in any monopoly of anything or restraint of interstate commerce. Its purpose was to do for its 567 members what the law recognizes as a legitimate object of a labor union, namely, to raise wages, shorten hours, improve conditions of employment, and it was engaged also in what the law recognizes as a legitimate object of a labor union, the organizing of employes, in trying not only to improve the conditions of its own members, but in bringing unorganized workers into its fold, and to protect them from the competition of those who are unorganized

and who underbid or undersell them, thereby destroying the standard of living which they have established for their own members. So much for the anti-trust indictment.

As to the racketeering indictment: We will prove to you that neither the union nor its members were racketeering. They were not engaged in going out into the highways and holding people up either for millions or for thousands of dollars or for hundreds of dollars. They were out for plain work for themselves. As far as the individuals were concerned, the union was concerned with obtaining the work for its members, and therefore it was trying to get contracts with those who were willing to
569 contract, with decent employers, referred to by Mr. Maguire, and when there were indecent employers, employers who would rather have a $4-day than a $9-day, it was trying to use legal means to compel them to enter into contractual relations with them by persuading peacefully and properly those who were unorganized to come into the fold by showing them and proving to them the benefit of labor organization. And when you have heard all of that you will be satisfied that we have met the charges in the indictment and will be entitled to a verdict at your hands.

The Court: Mr. Boudin, you represent the defendant Powers individually, do you not?

Mr. Boudin: If your Honor please, there is some mistake which we will straighten out. I represented Hickey
570 and Clarke.

The Court: Who represents Powers?

Mr. Boudin: They have been dismissed. Mr. Murray and myself will adjust this problem of Mr. Powers.

The Court: Now let me say to the members of the jury, there are 36 individual defendants in this case, 33 of whom are represented by Mr. Murray, and then there is the local itself, No. 807, which is represented by both Mr. Maquire and Mr. Boudin and Senator Wheeler, as counsel.

Mr. Maguire represents one individual defendant. Either Mr. Boudin or Mr. Murray represents another, and Mr. Duff and Mr. Aronstein represent the last of the defendants, Noonan, as to whom I gave them permission to make their opening at the commencement of the defense for the reasons already stated. I know it is difficult to identify in your minds the names of so many people at one time, but by observance and practice you will ultimately learn them as a child learns to walk up and down stairs, but to aid in that respect I have prepared a list of the defendants alphabetically arranged so that as the names are mentioned they can be promptly located on this list, and with the consent of all counsel each jury man and 572
each jury woman will be presented with a copy of this list. Probably I had better withhold its presentation to you until tomorrow morning, not only to enable the adjustment with respect to the statement on this list regarding the defendant Powers, but also so that none of you will be tempted to leave the list home tonight.

Now there is just one thing further that I want to say: I want to make clear the function of the jury and the Court. It will be my duty to preside over this trial and to see that it is conducted with decorum and dignity and fairness, to rule upon questions of evidence as they arise and the questions of law as they are presented and different motions counsel may make, and at the conclusion of the trial if it is to be submitted to the jury upon questions of fact, to charge you then as to what the law applicable 573
is. I can't do that now because it is necessary, or at least the Court thinks it is necessary, in order to make a proper application of the law to first find out what the facts are, because too often some laws at least may be applied to any given state of facts but where there are other facts to be taken into consideration, when those facts are known the law does not apply at all. Now so far as the question of the facts in this case are concerned,

you are the triers of the facts and it will be for you upon the facts and with such knowledge of the law as the Court is able to impart to reach a verdict in this case. I shall ask that each of you reserve your determination until the end. Keep an open mind until you have heard all of the testimony offered on both sides, if there is to be testimony offered on both sides. No one is permitted to discuss with you anything pertaining to this case during its trial, and I ask you to particularly observe that injunction.

We will now adjourn until tomorrow morning at half-past ten. I expect the case will go on every day punctually at half-past ten. There will be a mid-morning recess
575 every day at a quarter to twelve and again in the afternoon at a quarter past three, and we shall endeavor to adjourn at four-thirty or as near thereto as may be possible, unless there is some unusual situation arising such as, for example, the presence on the witness stand of a person whose testimony is practically completed and who comes from a distance and whom we may conclude with at that particular session so he won't have to come back the next day. If there are any unusual situations that arise in the families of any of the jurors, under those circumstances I would ask that you communicate with the Court so that we may know how to meet such situation: if anybody is taken ill or anything of that kind, or a juror is detained by a jam in the subway; just telephone down and let us know what has happened and how long you
576 will be detained so we can adjust things accordingly. The jury may retire.

(Adjourned to April 17, 1940, at 10.30 A. M.)

New York, April 17, 1940,
10.30 A. M.

TRIAL RESUMED.

(Daniel Kirchman appears for James D. C. Murray.)

The Court: Is Mr. Murray here?

Mr. Kirchman: If your Honor please, Mr. Murray is in the Court of General Sessions. I will represent the defendants in his absence. He will be here shortly.

The Court: Will you gentlemen come up just a moment.

(Conference at the bench between Court and Counsel, not within the hearing of the jury.) 578

The Court: The clerk will call the names of the defendants, and as each defendant is called he will please rise and answer.

(The clerk called the roll of defendants and each arose and answered.)

The Court: You may proceed.

ALBERT A. DEROCHES, of Derby Avenue, Derby; Connecticut, called as a witness on behalf of the Government, 579
being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. DeRoches, will you keep your voice up so the last juror in the jury box can hear every word you say? Where were you employed in 1937? A. Deptula Trucking Company, Shelton, Connecticut.

Q. When were you first employed by the Deptula Trucking Company? A. Well, in about November, I would say of that same year.

Q. 1937? A. Yes.

Q. And until when? A. Until April, 1939.

Q. Did you drive trucks into New York City? A. Yes, sir.

Q. How often? A. Well, five times in two weeks.

Q. When you arrived in New York City did you unload the truck yourself? A. Well, we did until we started to have trouble with these fellows.

Q. What fellows?

581 Mr. Maguire: I move that it be stricken out.

The Court: Strike it out. The answer yes or no.

The Witness: Yes.

Q. Did you unload the truck yourself on every trip into the City? A. Not every trip, no.

Q. Now, how did you drive into New York City, Mr. DeRoches? By what road? A. Boston Post Road.

Q. As you drove over the Boston Post Road with your truck did anybody meet you or intercept you? A. Well, they used to meet——

Q. Don't say "they."

Mr. Maguire: I move the answer be stricken out.

582 The Court: Strike out the word "they."

Q. Tell us who met you and tell us what happened. A. Well, when we got as far as the Bronx——

Mr. Boudin: Louder, please.

Q. Please keep your voice up.

The Court: Just a moment. The Court is in charge of the trial of this case. If there is any

counsel who desired to have a witness speak louder, counsel will address himself to the Court and the Court will make the direction. This interruption by shouting at witnesses will not be tolerated here.

Mr. Boudin: I am sorry, your Honor, but I would like the witness to keep up his voice.

The Court: Please be seated. You have made your apology and I have made my direction and I want it understood that the Court is in charge of this trial. Proceed.

Q. (Read: "As you drove over the Boston Post Road with your truck did anybody meet you or intercept you?") 584
A. When we got as far as the Bronx, the way I can explain it is the first drawbridge in the Bronx, this Joseph Siciliano —I don't know how to pronounce it.

Q. Yes, go ahead. A. And his two brothers used to meet us. From there on they wanted to take our trucks and deliver the load.

Q. How did they meet you, at what point? A. On the street; that is the only way I can explain it. No specified place.

Q. Go ahead. A. They wanted us to get off our trucks, or at least they had to drive the truck in. That is what they said.

The Court: Well, when did such an instance first occur? 585

The Witness: I would say in the latter part of November, 1937.

Q. And when did you first go to work for Deptula? A. It was about the beginning part of November.

Q. 1937? A. Yes.

Q. Now, what did you say to the Sicilianos? A. I told them I had to call up my employer and find out if it was

all right and they told me to, and I went up and called up and my employer is a woman and she told me——

Mr. Maguire: I object to what she told.

The Court: Sustained.

Q. All right. You had a conversation with your employer. A. Yes.

Q. What did you say to the Sicilianos? A. That I was supposed to go on alone.

Q. And unload yourself? A. Unload myself.

Q. What did they say? A. Well, they said, "We can't let you do that. We got to hold the truck until we put
587 a union man on the truck."

Q. What happened after that? A. Well, we just told the fellows that we couldn't put a union man on the truck, we couldn't afford it; if they were put on we would lose this much money ourselves, we wouldn't make a day's pay ourselves, and they said if we didn't come to terms they would hold the truck until the money was sent by telephone.

Q. That is all they said to you? A. Yes.

Q. Did they say——

Mr. Boudin: If your Honor please, I move to strike out the last part of the witness' answer. It is apparently a conclusion of the witness.

588 Mr. Marks: I beg your pardon, your Honor. I understand that to be part of the conversation.

The Court: That is his conclusion. You may ask him what was said, and the jury will determine from what was said whether that was an agreement, or what it was.

Q. What did the Sicilianos say to you about tying up the truck? A. Well, they tied up the truck until we——

Q. No, what did they say?

The Court: What did they say? Do not give us your conclusion, but tell us what the man said.

The Witness: Well, the man said that if he was not paid to get on that truck the truck would not move. It would stay right there all day and he would hold it.

Q. How much money did he ask for? A. $10.42 a day.

Q. Do you remember whether it was $10.42 or $9.42? A. Well, they used to tell me it was $10.42. The Siciliano brothers. That is the best I know.

Q. By the way, Mr. DeRoches, how far is Shelton, Connecticut, from New York City? A. Well, it is approximately eighty miles to downtown New York. 590

Q. And that is where the Deptula Trucking Company is located? A. Right.

Q. About how many hours did it take you to drive from Shelton to New York? A. Well, to the State line it takes two hours, and another hour downtown.

Q. About three hours altogether? A. About three hours, three hours and a half.

Q. And that is to the point where you would make your deliveries? A. Oh, no. We probably started our deliveries just as soon as we got to the New York State line.

Q. I see. Now how often did the Sicilianos stop you when you drove your truck into New York? A. Well, 591 from the latter part of November until around April or May, 1938, it was continuous.

Q. That is, every time you drove in? A. Every time I went down, yes, sir.

By the Court.

Q. On this first occasion you have referred to, the first time you ever met these three brothers and had this con-

versation you testified to, did your truck stay there all day where this conversation took place? A. Oh, no. My employer finally agreed to send them the money——

The Court: Strike that out.

Q. How long did the truck remain at that place where you were stopped, where you stopped the car and had this conversation? A. About three hours.

Q. And then did anything happen in your presence? A. No.

Q. Did you talk with anybody? A. Well, we talked back and forth.

593 Q. Well, did you talk to anybody else besides these three brothers? A. To our own drivers.

The Court: All right.

By Mr. Marks.

Q. Do you know whether these Sicilianos talked on the telephone to anybody? A. That I do not know.

Q. Did they usually stop you in the same way when you drove into the city? A. Yes.

Q. And you had similar conversations every time? A. Yes.

Q. Do you remember whether they demanded $10.42 each time? A. Yes.

594 Q. Did they ever do anything else, other than talk to you? A. Well, I don't quite understand that.

Q. Well, do you remember one occasion——

The Court: Don't lead, Mr. Marks.

Mr. Marks: I beg your pardon?

The Court: Don't lead him.

By the Court.

Q. On these occasions when your truck stopped and you had a conversation with the Siciliano brothers, did anything ever happen? A. Well, there was one incident where——

Q. When was that? A. This was in about the first part of April, 1939.

Q. 1939? A. 1939, that is right, sir.

Mr. Maguire: I object to it, if the Court please; not within the issues of this indictment.

The Court: Sustained.

596

By Mr. Marks.

Q. Do you remember any incident before the end of May, 1938? A. Well, I was stopped over at Spearbox's on 26th Street, west side, Eleventh Avenue, and Bob Dillon and five other union drivers——

Q. Who was that? A. Bob Dillon.

The Court: When was that?

Mr. Marks: I beg pardon?

The Court: When was that?

The Witness: That was prior to this time in April, between April, May of 1938 and April, 1939.

597

Q. Yes? A. And he stopped our trucks.

Q. Who was that? A. Bob Dillon.

The Court: One moment. There is a whole year there. The witness must be more specific as to time.

Q. Was it prior to the end of May, 1938? A. Yes.

By the Court.

Q. You know you are in 1940 now? A. Yes.

Q. This is April, 1940. A. Yes.

Q. Was it two years ago or one year ago? A. Two years ago, 1938.

Q. And what month was it? A. It was around May, I would say.

Q. Well, was it before Decoration Day? A. Your Honor, I do not really know the approximate date.

Q. Well, you know when Decoration Day is, don't you? A. Yes, May 30th.

599 Q. Was it before or after that date? A. Well, I would say it was before.

By Mr. Marks.

Q. Now what happened? A. And this Bob Dillon and the five men who were with him stopped our trucks and told us that we would have to put union drivers on them in order to deliver the load, and myself and the two other drivers called up our employer by the telephone and talked to her, and she told us that——

Q. No——

The Court: No, don't tell us what she said.

600 Q. Don't tell us what she told you. After you talked to her what happened? A. After we talked to her we went out and got in our trucks to deliver our loads, and Bob Dillon and his five men told us that we could not do it.

Q. What else did he tell you? A. That we might be injured so as to be put in the hospital or suffer some sort of injuries that would not be very pleasant.

Q. That is, if you did unload? A. If we did unload.

Q. Did he tell you anything else? A. That we should get wise to ourselves and put a button in our hat, which we couldn't do in New York City.

Q. What did he mean by "a button in your hat"? A. I imagine he meant joining the union. It is an expression they use.

Q. Now, with the Court's permission, will you stand up, Mr. DeRoches, and look around this court room and see if you can find anybody that you recognize?

Mr. Marks: May he step down from the stand, your Honor, if he desires?

The Court: Yes, but I think the question ought to be more specific.

Q. Do you see Bob Dillon in this court room? A. The fourth man from the left in the rear row. 602

Mr. Marks: May we have the fourth man from the left in the rear row stand up?

The Court: Yes.

(A man stood up.)

Mr. Marks: No, that is the third.

Mr. Maguire: Now, now——

Mr. Marks: That is not the one he meant.

Q. Is that the man you meant?

The Court: Let the witness go down and indicate the man he says is Dillon.

(The witness stepped down and pointed out a man.) 602

Mr. Marks: May the record indicate that the witness has identified the defendant Robert Dillon?

The Court: I do not know whether he has or not.

Mr. Marks: I do not think there is any dispute about it.

The Court: He has identified one of the defendants who is seated in this place.

Mr. Marks: Well, may we have a concession that that is Robert Dillon?

(No response.)

The Court: Well, I will ask the clerk to call the name "Robert Dillon".

The Clerk: Robert Dillon, please rise.

(A man arose.)

Mr. Marks: May the record indicate that the same man has arisen?

The Court: Yes.

Mr. Marks: All right, thank you, Mr. DeRoches.

(Witness returned to the witness stand.)

605

By Mr. Marks.

Q. Now will you tell us whether Dillon said anything else to you on that occasion? A. No.

Q. Did you unload your truck yourself that time? A. Yes.

Q. And did you ever see Dillon again either—did you ever see Dillon before that? A. No.

Q. Did you ever see him after that? A. No.

Q. Have you ever had a conversation, Mr. DeRoches, with any of the Siciliano brother with respect to this prosecution? A. No.

Q. Now let me show you this and ask you whether that refreshes your recollection (handing paper to witness).

606

Mr. Murray: Your Honor, may the paper be marked for identification?

The Court: It will be when he gets through with it.

A. I could tell you in my own words——

The Court: No. The question is a simple question which you can answer yes or no. You were

asked whether you ever had a conversation with him about this case.

The Witness: Yes.

Q. Will you tell us——

The Court: One moment. Let us have the paper marked for identification so we will know what paper the witness referred to when he refreshed his recollection.

(Marked Government's Exhibit 1 for Identification.)

608

Q. Now will you tell us what that conversation was?

Mr. Murray: If your Honor please, I object on the ground that it is hearsay because there is no evidence before the Court at this time that Siciliano was a member of the union. He is not indicted——

The Court: I will sustain the objection.

Mr. Marks: Now, if your Honor please, we offer this on the theory that the Siciliano brothers were part of this conspiracy.

The Court: You have not laid a proper foundation. I do not know yet who the Siciliano brothers are.

Mr. Marks: Well, may we have that subject to a motion to strike in the event—— 609

The Court: No.

Mr. Marks: We will excuse this witness subject to recall then, your Honor, if we may.

The Court: Does any one desire to cross-examine him now, or do you desire to reserve your cross-examination?

Mr. Murray: I desire to reserve my cross-examination, if your Honor please; but at this time I

move to strike the conversation that the witness alleges he had with the Sicilianos and any acts committed by the Sicilianos, according to the testimony of this witness, on the ground that they are unconnected with this case. Therefore, that it is hearsay.

The Court: There is nothing before me to indicate that the conversations which the witness has testified to were had with anyone on trial or named in the indictment.

Mr. Marks: I believe the testimony of the next witness will have some light on this, your Honor.

611 Now, of course, we must offer our witnesses one by one.

The Court: I will reserve decision on the motion to strike out.

Mr. Murray: And may I reserve my cross-examination?

The Court: You may. The witness will step down. Call the next witness.

(Witness excused.)

ANNA E. CHUDY, residing at 157 Center Street, Shelton, Connecticut, called as a witness in behalf of the Government, being duly sworn, testified as follows:

612

Direct examination by Mr. Marks.

Q. Now, Miss Chudy, will you keep your voice up so that all the members of the jury can hear what you say? A. Yes.

Q. How far is Shelton, Connecticut, from New York, Miss Chudy?

The Court: Haven't we already got that?

Mr. Marks: All right.

Q. What is your business? A. Trucking.

Q. And what is the name of the company? A. Deptula Trucking Company, Inc.

Q. And it is located in Shelton? A. It is 157 Center Street, Shelton.

Q. What position do you occupy there, Miss Chudy? A. Secretary.

Q. How long has that company been in business? A. About thirty-six, thirty-seven years.

Q. You are the secretary of the corporation? A. Yes, sir. 614

Q. How many trucks did you operate in 1937? A. Ten.

Q. And were you a contract carrier? A. Yes, sir.

Q. For what company? A. The Robert Gair Company and Sidney Blumenthal & Company.

Q. What type merchandise did you haul? A. Paper and textiles.

Q. And from what points to what points? A. From Shelton to New York; from New London to Shelton and New York.

Q. And about how many trips a week did your trucks make in New York City? A. Well, they were going in about—at that time they would average about four a day for five days.

Q. Now, do you remember whether in about 1937 you 615 received various telephone calls? A. Yes, from my drivers.

Q. And did you receive telephone calls from New York City from any other persons? A. Yes, sir, from the union delegate——

Mr. Murray: If your Honor please, I object to the mention of the name without any foundation.

The Court: She may answer yes or no.

A. (Continued) Yes.

Q. From whom?

Mr. Murray: I object, your Honor.

The Court: Sustained until it is shown that she knew the person with whom she was talking.

Mr. Marks: If your Honor please, we have testimony that certain individuals or persons stopped trucks of this witness at about a certain time in New York City. Now may we have testimony that somebody called up and gave his name as A or B?

The Court: No.

Mr. Marks: I submit, your Honor, that it is
617 circumstantial evidence from which a jury might draw the conclusion that that person is the one who called.

The Court: I have already ruled.

Q. Do you remember any occasion, Miss Chudy, when you went to the headquarters of Local 807 in New York City? A. Yes.

Q. Whom did you see there? A. There was a Mr. Brennan. That is one name I remember. That is about all I really could say.

Q. Would you please stand up and look around this court room and tell us if you see anyone in the court room whom you saw and spoke to in the union headquarters? You can stand up if you wish and step down. Take your
618 time. A. I think that that smaller dark man (indicating); still it might not be he.

Q. Will you step down and point him out, please? A. Near the empty chair. The third row, this man in back of him. One of the men resembled——

Mr. Marks: May we have the witness step down, your Honor?

The Court: Yes.

Q. Will you please step down and point out the man that you mean? A. (Witness steps down) This man here (indicating).

Mr. Marks: May we have the record indicate that the witness has identified the defendant William Campbell. Any objection to that?

(No response.)

Mr. Marks: I hear no response. I take it there is no objection.

Mr. Murray: If your Honor please, I do not want to be quarrelsome, but I think the procedure is improper for a United States Attorney to ask the defendants' counsel to concede anything. 620

The Court: The defendants' counsel will not be called upon to concede anything, nor is the defendants' attorney subject to examination or cross-examination except if he is called to the witness stand and sworn. The witness has identified one of thirty-six defendants in this court room, and certainly the jury cannot at this stage of these proceedings determine who the person is. I will ask the clerk to call the name of William Campbell. Mr. Campbell is not required to make any answer except to rise in his place if he is in the court room.

The Clerk: William Campbell.

(A man arose.)

The Court: Now, the record shows that the same person who rises in response to the call of the name William Campbell is the same person whom the witness identified. 621

Q. Now, will you tell us what the conversation was at the union headquarters with William Campbell and the others?

Mr. Murray: May I object to that? There is no statement there was a conversation with Campbell.

The Court: Just a moment. There is no evidence here that there was anybody else present, or who it was.

Mr. Marks: Well, the witness, I believe, testified, your Honor, that there was another man named Brennan present and sombebody else whom she could not remember.

The Court: Well, I am not commenting upon the testimony. The witness has referred to the presence of a Mr. Brennan, and you asked her to go
623 down and point out the person that she talked with, and she went down and pointed out a man named Mr. Campbell.

Mr. Marks: I beg your Honor's pardon. My understanding of the testimony is that she said she talked to one or two people, and one of their names she recollected as Brennan, and I asked her to step down.

The Court: Well, I will ask the stenographer to repeat the last three or four questions.

(Record read by stenographer as follows:)

"Q. Do you remember any occasion, Miss Chudy, when you went to the headquarters of Local 807 in New York City? A. Yes.

624 "Q. Whom did you see there? A. There was a Mr. Brennan. That is one name I remember. That is about all I really could say.

"Q. Would you please stand up and look around this court room and tell us if you see anyone in the court room whom you saw and spoke to in the union headquarters? You can stand up if you wish and step down. Take your time. A. I think that that smaller dark man (indicating); still it might not be he.

"Q. Will you step down and point him out, please? A. Near the empty chair. The third row, this man in back of him. One of the men resembled——

"Mr. Marks: May we have the witness step down, your Honor?

"The Court: Yes.

"Q. Will you please step down and point out the man that you mean? A. (Witness steps down)."

The Court: All right, and identifies William Campbell.

626

By Mr. Marks.

Q. Now, was William Campbell one of the persons you talked to at union headquarters? A. Yes.

Q. How many people were present at that conversation? A. Three.

The Court: Do you know the names of the other two?

The Witness: I didn't remember the name of Campbell. I only remember the name Brennan.

The Court: Well, was Mr. Brennan one of the three persons present at that time?

The Witness: Yes.

627

Q. Will you tell us what the conversation was? A. Well, I asked them did——

The Court: What did you say?

The Witness: I asked them whether I had to keep the men that I had, that I was disappointed with them and they were very rude and didn't take care of the trucks properly, and they told me that

as long as I didn't belong to this union they couldn't do anything for me. But I said, "Well, these men belong to your union and you ought to do something for me."

Q. Did you mention the names of the men? A. Yes.

Q. What name was it that you mentioned? A. The man that I objected to very much was Joseph Siciliano.

Q. Did you mention any other name? A. I told them that his brother Ralph worked for us, and he was satisfactory.

629 The Court: How many times had you seen Joseph Siciliano?

The Witness: Several times. I couldn't tell you exactly.

The Court: How many times did you talk with him?

The Witness: Several times.

Q. Now, will you tell us the full conversation you had with William Campbell and the others about the Sicilianos? A. Well, they told me—I told them they were losing tickets.

Q. What do you mean by losing tickets? A. We were losing signed freight receipts; they were very rude to me; that I was afraid of them; they didn't care how they
630 handled the trucks, and I told them that there were two men—— I told them there was another man, Joe Briggs, that I could work with, and I could work with Ralph Siciliano, but they couldn't help me.

Q. What did they say? A. I told them that I couldn't join the union because I was a contract carrier, and that my rates were fixed.

Q. Did they ask you—— A. And my men were fully capable of delivering their own loads, because most of it was straight load.

Q. What do you mean by straight load? A. To one consignee.

Q. That is, the entire truck was loaded with merchandise—— A. And left at one stop, and when I had two or three stops I generally sent a helper along with my driver.

Q. Now, did Campbell or Brennan or the other man there ask you to sign a contract with Local 807? A. When we finished the conversation they said they didn't care to have me join the union.

Q. Well, tell us the entire conversation. Have you left any of it out? Have you left any part of it out; have you left any part of the conversation out? A. I don't know. It is kind of hard for me to tell.

632

Q. When you say they talked about your joining the union, did they talk about your own drivers joining Local 807? A. No; my drivers couldn't join. They wouldn't accept them.

Q. Did you ask them whether your drivers could join Local 807? A. Yes, I did.

Q. What did they say? A. They had enough men of their own; they couldn't have any more; because I told them my own men would handle the trucks better; when they changed drivers like that——

Q. When you refer therefore to your joining the union, did you mean that you would have to hire Local 807 men in New York City? A. Yes, sir; but even if they would let me pick out my own men.

Q. Did you ask them whether you could pick out your 633
own men? A. After I asked—no, they didn't give me that satisfaction.

Q. What did they say? A. I don't remember that, but I know if they did I would have talked with them more.

Mr. Boudin: May I have the last part stricken out?

The Court: Yes, strike it out.

Q. Did you ever sign a contract with Local 807? A. No.

Q. What else did you tell these three men at union headquarters about the Sicilianos? A. Well, I told them how I was disturbed and I said, "Do I have to marry these men? Do I have to keep them? I can't get rid of them?"

They said as long as I didn't—that is the answer they gave me—if I didn't sign up——

Q. Go ahead. As long as you didn't sign up what? A. That they couldn't tell the men.

Q. Did they say what would happen if you did sign up? A. No, because when I got through talking, the conversation changed and they told me they didn't care to have me
635 join the union.

Q. Then it ended? A. Yes.

The Court: You don't mean join the union personally?

The Witness: No.

The Court: You mean sign a contract?

The Witness: Yes.

Q. Did you tell these three men at union headquarters any experiences of your drivers with the Sicilianos? A. Yes. I told them my drivers didn't like them.

Q. Tell us everything you said.

Mr. Murray: If your Honor pleases, at this time I
636 object to any conversation concerning the heretofore unidentified Sicilianos.

The Court: Sustained.

Q. You testified, I believe, that you told these three men that the Sicilianos were members of Local 807?

Mr. Murray: I object.

The Court: I sustain the objection to that.

Wouldn't the three officers or members of Local 807 know who were the members of their union?

Mr. Marks: That is what I was trying to bring out, your Honor.

The Court: You can't bring it out with that type of question.

Q. Was there anything said in that conversation about the fact that the three Siciliano brothers were members of Local 807?

Mr. Murray: I object to the form of the question.

The Court: She may answer yes or no. Overruled. 638

A. Yes.

The Court: Give us the conversation.

Q. On that subject. A. Well, that if——

The Court: No, no. Wait a minute. We are concerned now with a specific conversation about the membership of three persons in Local 807. Now what was said about that? Who said what?

The Witness: Well, one of the three men—I don't know which—one of the three men in this room with me told me if I signed a contract they would tell the Sicilianos what to do.

The Court: Is that all that was said with respect 639 to the Sicilianos?

The Witness: Yes.

The Court: Being members of 807?

The Witness: Yes.

Mr. Murray: I move to strike the answer out.

The Court: I will let it stand.

640 *Anna E. Chudy—For Government—Direct.*

Q. Now you had begun to tell us before, Miss Chudy, about that part of the conversation with these three men in which you told them of the experiences of your drivers with the Sicilianos? A. Yes.

Mr. Boudin: That we object to, your Honor.

The Court: Yes. That is just a recapitulation by counsel of what considers to have been the testimony heretofore given, and I sustain the objection.

Don't repeat the testimony. Ask her directly whether she has told all the conversation she had, and if not, let her state anything else that she

641 hasn't told.

Q. Have you told us all the conversation you had with these three men about the experiences of your drivers with the Sicilianos? A. All that I can remember.

The Court: Is there any further conversation that you had on this occasion with any one of these three men at Local 807 that occurs to you now that you haven't given before?

The Witness: No. This is a serious thing. I am trying to tell you just exactly what I could remember and what I can't.

The Court: You have told us all now? All you recall?

642 The Witness: Yes.

The Court: All that conversation?

The Witness: Yes.

Q. Well, did you tell these three men that your drivers were afraid of the Sicilianos? A. Yes.

Mr. Murray: I object, if your Honor please.

The Court: Sustained. Strike out the answer.

Mr. Marks: If your Honor please, I submit I am entitled to refresh the witness' recollection.

The Court: You are not entitled to refresh the witness' recollection by testifying yourself and then having her ratify it by the answer yes.

Mr. Marks: When the witness' recollection is exhausted——

The Court: That is not the way to refresh the recollection of the witness, by putting the words in her mouth and having her confirm it, and I won't permit that sort of examination.

Q. Did you say anything to these three men about the state of mind of your drivers with respect to these Sicilianos? A. Yes. 644

Q. What did you say to them about that?

Mr. Boudin: Same objection.

The Court: I will allow it.

Mr. Boudin: Exception.

A. I told them that my drivers were afraid of the men.

Q. Anything else along that line? A. That the drivers wouldn't report anything that was going on. If they tore a cover they wouldn't tell me who tore it. They were afraid to blame these men.

Q. Did you say anything to these three men on the subject of the ability of the three Sicilianos to handle the trucks? A. Yes. 645

Q. Or to drive the trucks? A. Yes. I said Ralph Siciliano, I thought——

The Court: She has already told us that Ralph Siciliano was satisfactory, and Briggs she could work with, and she objected to Joseph. Now we have all that.

Mr. Marks: I don't recollect any specific testimony on their ability to drive the trucks.

The Court: Proceed.

The Witness: I thought that Joseph Siciliano handled the truck real roughly.

Q. Now, Miss Chudy, approximately how much money have you paid altogether to the Sicilianos?

Mr. Boudin: I object to it as irrelevant and incompetent.

The Court: Yes. I will sustain the objection.

647 Mr. Marks: Now, if your Honor please, one of the allegations in the indictment is the fact that the over-the-road truck was forced to pay money to various members of Local 807.

The Court: Well, there is a distinction between forced to pay money and the payment of money. I may pay somebody $10,000, and I might only have been forced to pay them $500; the other $9500 might have been a perfectly legitimate payment that nobody would ever question. So you can't start with the top figure and then by a process of deduction reduce it down to what you claim was forced out of somebody.

Mr. Marks: May I refresh the recollection of the witness on her state of mind on the subject of those

648 payments?

The Court: No. You can interrogate the witness and show under what circumstances any particular payments were made within the terms of the indictment.

Mr. Boudin: If your Honor will permit me, I desire to specifically call your Honor's attention to the fact that wages are specifically exempted by the statute.

The Court: Bona fide wages?

Mr. Boudin: Yes.

The Court: When you put the word "bona fide" I agree with you.

Mr. Boudin: And the witness testified that these people work for her. She may not have been satisfied with the way one of them worked, but that is not——

The Court: The government is entitled to show the circumstances by legal evidence for the purpose of having it determined whether the wages were bona fide or not.

Mr. Boudin: Could we except to that, if your Honor please? 650

The Court: You mean my statement?

Mr. Boudin: Well, that is practically a ruling. It means an instruction to the jury, and I respectfully except.

The Court: You may do that. You may take exception to any ruling I might make.

By Mr. Marks.

Q. Miss Chudy, getting back for the moment to your conversation with these three men in union headquarters: Did you say anything to them on the subject of the Sicilianos' attitude towards your customers in New York City? A. Yes. 651

Q. What did you say to them? A. That they were very rough in how they talked to our customers, customers where deliveries were made; Joseph Siciliano. My main argument there was against Joe Siciliano.

Q. Did you tell them what your customers said about the Sicilianos? A. No.

Mr. Boudin: That we object to.

The Court: Sustained.

652 *Anna E. Chudy—For Government—Direct.*

Q. How did you make payments? That is, by check or Western Union money order, to the Sicilianos? A. In 1938 I would send down Western Union.

Q. When did you send down these Western Union money orders? A. I don't know.

Q. I don't mean the dates, but what would happen before you sent them down? A. We would have to go to Western Union——

Mr. Murray: I object.

The Court: I sustain the objection to that question.

653 Q. Did you receive any telephone calls in 1937 or 1938 from New York City? A. Yes, sir.

Q. From whom?

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Q. Did you recognize the voices of any of the persons calling you? A. Would I recognize——

Q. Did you? A. Yes, but I was told immediately who it was.

Q. Aside from that, did you recognize the voices? A. No, I wouldn't say that, no.

Q. How often did you meet the Sicilianos? A. Why, I
654 met them a lot. They are from our home town.

Q. How long have you known them? A. I wouldn't know how many years, but quite a few years.

Q. You have talked to them a good many times? A. Yes.

Q. Did you recognize their voices?

Mr. Boudin: I object to that on the ground that the question has already been answered.

The Court: I sustain the objection.

Mr. Marks: Well, I didn't ask the question about the Sicilianos, your Honor, specifically. May I be permitted to ask specifically about the Sicilianos?

The Court: Put the question.

Q. Did you recognize the Sicilianos' voices when they spoke to you? A. Yes.

Q. Now did you receive any telephone calls in 1937 and 1938 from New York City and from the Sicilianos?

Mr. Murray: I object, if your Honor please, on the ground it is leading and suggestive.

The Court: I will allow her to say yes or no. 656

A. Yes.

Q. Will you tell us about how many such telephone calls you received.

Mr. Murray: I urge the objection.

A. I don't know.

Mr. Murray: On the ground that I don't think the voices of the Sicilianos have been recognized by the witness. In the second place,——

The Court: Overruled.

Mr. Murray: Secondly, your Honor, because they haven't been connected with this union.

The Court: I haven't allowed her to testify what 657 the conversations were.

Q. You say you don't know how many such telephone calls you received? A. No.

Q. Can you give us an estimate, approximately how many? A. No.

Q. Were there more than two or three? A. Yes, more.

Q. More than 10 or 12? A. I wouldn't want to say. Several.

The Court: What difference does it make how many telephone calls she got from New York?

Mr. Marks: Well, now, if your Honor please——

The Court: Unless these telephone calls are related to the subject matter of this indictment.

Mr. Marks: Well, that is precisely what I am going to show.

The Court: Why don't you confine your question to conversations that were had with persons with relation to the subject matter. Somebody might
659 have called her up to find out if the home team won the ball game.

Mr. Marks: They might also have called up to demand money. That is what I am trying to show.

The Court: If there was money demanded in three conversations and she had a hundred, what difference does it make how many conversations she had?

Q. What did the Sicilianos say to you about your trucks?

Mr. Maguire: I object to it as not binding.

The Court: Sustained.

Mr. Marks: May I know the ground of the objection, your Honor, so I will be guided accord-
660 ingly?

The Court: Yes. Who are the Sicilianos?

Mr. Marks: The Government contends that the proof already shows they are members of this conspiracy.

The Court: Are they defendants in this case?

Mr. Marks: No, sir, they are not defendants. The indictment names others unknown to the grand jury.

The Court: I will sustain the objection for the present.

Mr. Marks: Once again, your Honor, I suggest that it will be necessary to recall all of these witnesses. We haven't——

The Court: Well, suppose it is. I am not going to sacrifice anybody's rights to the convenience of the trial of this case.

Mr. Marks: Well, except that this is a matter which addresses itself to your Honor's discretion.

The Court: It does not address itself to my discretion at all. You can't make hearsay testimony admissible against anybody in a conspiracy case 662
until you have shown that there is prima facie a conspiracy. That is the law. You know that as well as I do.

Mr. Marks: Yes, sir, but it is for your Honor to determine when a conspiracy has been established prima facie.

The Court: All right. If it is for me to determine, I will determine now that it has not been established in this case yet. So now there can't be any doubt or shouldn't be any doubt on your part as to why I exclude this testimony, and please don't argue it any further. Proceed to show the conspiracy, if one exists.

By Mr. Marks. 663

Q. Did you have any conversations with anybody else in New York City on the subject matter of your trucks? A. Yes.

Q. With whom? A. Bob Dillon.

Q. Will you tell us the nature of that conversation or those conversations? A. I had two trucks unloading at one platform and they were—both trucks could easily

be unloaded in an hour and a half. I wanted to have one man unload the both of those trucks, and I would send down $10 and some odd cents.

The Court: Is this what you told him?

The Witness: Yes. And he said "No," I had to send down for two men, and I said, "Well, gosh, one man can unload that in an hour and a half." He said, "That doesn't make any difference. One man for each truck," and if I didn't do that, that I couldn't unload these trucks and they would have to come back into Connecticut.

665 Q. Fully loaded? A. They were fully loaded.

Q. That is, he said they would have to come back to Connecticut fully loaded? A. They would not be touched. They would have to come back into Connecticut. They wouldn't allow me to unload these trucks. I said, "Why can't your men unload them?" And he said, "They can't do it." He said he would put me out of business for it.

Q. Dillon said that to you? A. Yes. He told me his name was Bob Dillon.

Q. Was there anything else said in that conversation? A. Well, there might have been but I don't remember.

Q. Now was that the only time you talked to him? A. No. I talked to him several times, but I haven't written it down. I know I talked to him on different occasions.

666 The argument would always be the same, where there would be two trucks and he would want to put two men on.

Mr. Murray: If your Honor please, would your Honor bear with me while I ask if it could be inquired if this is a telephone conversation or face to face conversation?

Q. This was a telephone conversation? A. Yes.

The Court: Well, she has already testified as to this conversation without objection.

Mr. Murray: I had assumed, that it was a face to face conversation, if your Honor please. It now turns out to be a telephone conversation. I move to strike it out on the ground that there is no basis laid for its introduction.

The Court: Denied.

Q. Now what was the subject of these telephone conversations you had with Dillon?

Mr. Murray: I object now. 668

A. The same principal——

The Court: Sustained. Strike out the answer. No conversation is admissible here that this woman had with anybody unless it comes within the period mentioned in the indictment, which is between the 1st day of December, 1936 and the 30th of May, 1938. You haven't brought out here when these conversations took place.

Q. Do you remember when you had these conversations with Dillon? A. 1937 and 1938.

Q. What part of 1938?

The Court: Well, this conversation? 669

The Witness: I don't know.

The Court: You have told us about two trucks unloading at one platform. That only happened in one year, that particular conversation?

The Witness: All my conversations——

The Court: No, no. I am talking about that conversation when you said you wanted to send

down $10 and the person you talked with wanted to be paid for two men.

The Witness: Yes.

The Court: In what year was that conversation?

The Witness: 1938.

By the Court.

Q. What month? A. I don't know.

Q. Well, was it in the first half of the year or the second half of the year? A. I wouldn't say. Our trucks were going down all year.

671 Mr. Murray: If your Honor please, in view of your Honor's question I move to strike out the conversation.

The Court: I will strike it out.

Mr. Marks: May I pursue that just a little further?

By Mr. Marks.

Q. Was it in the spring or summer or winter?

The Court: I asked her if it was in the first part of the year or latter part of the year and she said she couldn't say.

672 Mr. Marks: Well, I asked if I might pursue it a little further, your Honor.

The Court: Proceed.

Q. Do you remember whether it was in the spring or summer or winter? A. No. Our trucks were going all year and this thing was going on this year.

Q. Do you remember to what consignee that particular load was consigned? A. One month I know it was Spear box Company in Brooklyn.

Q. Is that the conversation you have told us? A. One of them.

The Court: She has only told us about one conversation, and she said there were two trucks at the same platform.

The Witness: I was called several times about the same thing.

The Court: Well, when was the first time you were called about such a situation?

The Witness: In the year 1938. That is all I could tell you.

The Court: You don't know whether it was before or after the 4th of July? 674

The Witness: No.

Q. But you are sure one was with respect to unloading at the Spearbox Company? A. Yes.

Mr. Marks: In view of the fact, your Honor, that the previous witness testified that Dillon was present when two of his trucks were there at the Spearbox Company in May, 1938, I submit that is a sufficient link in point of view of time between that and this conversation.

The Court: No. We are going to try this case on facts and not on suppositions.

Mr. Marks: That is my only desire, but I think there are enough facts from which the jury might 675 draw a reasonable inference.

The Court: The Court disagrees with you. You will have to fix the time within the four corners of this indictment in order to make the testimony admissible at all against anybody. We are not going to have a witness testify to a conversation that took place some time in the year 1938 and if it should afterwards develop that the conversation

occurred in September, have it used as a peg upon which to put responsibility for something that had happened before the 30th of May. That is too loose.

Mr. Marks: I think the doctrine of similar acts applies to acts committed subsequent to the filing of an indictment as well as to acts committed prior to the period charged in the indictment.

The Court: Not when you are at the threshold of establishing a conspiracy. No. No such thing.

By Mr. Marks.

677 Q. After this telephone conversation with the Sicilianos, Miss Chudy, did you send any money to New York? A. Yes, sir.

Q. How did you send the money?

Mr. Maguire: I object to this as incompetent and immaterial.

The Court: I will allow it.

Mr. Maguire: Exception.

The Court: She may say how. Whether it was a check or what.

A. Western Union. Sometimes we gave a driver money and the driver had it and paid. Siciliano had come up for money——

678

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Mr. Boudin: I respectfully except to the payment of money by Western Union.

The Court: No.

Mr. Boudin: Apparently if it was Western Union or check, that would be the best evidence.

The Court: How can you produce a check or money order until the witness has indicated what it was?

Mr. Boudin: Yes. But, I have no objection——

The Court: Motion denied.

Mr. Marks: That is all.

The Court: Cross examine.

Mr. Boudin: If your Honor please, I move to strike it out on the ground that the witness has said that it was a money order, that is not produced——

The Court: Denied.

Mr. Boudin: Exception.

The Court: It may be that somebody from the Western Union or somewhere else will produce the money order. I don't know. After a person sends 680
a money order, ordinarily you have to get somebody else to connect it up. I will allow the testimony to stand subject to a motion to strike out at a later time if not connected.

Does anybody desire to cross examine this witness?

Mr. Murray: If your Honor please, I move to strike out the witness' testimony on the ground, first, that there is no proof of a conspiracy, and, secondly, the evidence is not admissible at this time.

The Court: Well, I will deny that motion with leave to renew it if the testimony is not connected. You can't put the roof on the house until you have built the foundation.

Mr. Murray: That is true, your Honor, but I 681
desire to move to strike out the conversation on the ground that it is leading.

The Court: I will deny the motion, as I have already said.

Mr. Murray: Defendants respectfully except. I have no cross-examination.

The Court: Does anyone else have any cross-examination?

Mr. Maguire: No.

Mr. Cahill: Excuse me, your Honor. The defendants seem to be getting up and leaving the room.

The Court: Just one moment. Come back here (addressing defendants leaving courtroom). Come back and take your seats. Anyone who desires to leave this room will get the permission of the Court. You are in the custody of the Court now. You are not walking in and out of a moving picture theatre. There will be a recess declared, as I said yesterday, at a quarter to twelve. Anyone who finds it necessary to leave this room before that time will ask
683 for permission and won't leave otherwise under any circumstances.

Mr. Cahill: May I have a roll called. There seem to be some vacant chairs now.

The Court: Yes. We will have a roll called.

(The clerk called a roll, and while doing so two defendants entered the courtroom and appeared at the bench and the Court addressed them as follows):

The Court: Where have you been?

(The defendants answered that they were in the bathroom.)

The Court: Well, don't do that again without asking the permission of the Court. Your presence is required every minute during the trial that this case is on.

684 (Witness excused.)

EDWARD DEPTULA, residing at 157 Center Street, Shelton, Connecticut, called as a witness on behalf of Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Deptula, where are you employed? A. With the Deptula Trucking Company.

Q. Will you keep your voice up so all the members of the jury can hear you. A. Deptula Trucking Company.

Q. In Shelton, Connecticut? A. Shelton, Connecticut, yes, sir.

Q. I am afraid you will have to talk a little louder. What position do you occupy with that company? A. Well, I 686
am a truck driver now.

Q. Are you an officer of the company as well? A. Yes.

Q. What officer? A. Vice-president.

Q. Did you drive a truck for the company in 1937 and 1938? A. I did.

Q. You drove a truck into New York City? A. I did.

Q. About how often during those years? A. Well, about on an average of about twice a week.

Q. Now when did you first begin to drive a truck into New York City? A. Oh, that was back in 1920.

Q. And you have driven in more or less continuously ever since? A. I have.

Q. In 1937 how did you drive into the city? Over what road? A. Well, if I was coming down the west side I 687
usually go over Fordham Road and come down.

The Court: You came down Boston Post Road to Fordham Road?

The Witness: Down Boston Post Road to Fordham Road.

The Court: Yes.

Q. Were your trucks stopped at any time on the Boston Post Road?

Mr. Murray: If your Honor please, I object unless the time is fixed.

The Court: Well, let us find out first if they were stopped at any time because if the answer is no, he couldn't fix any time.

A. No, I never got stopped on the Boston Post Road.

Q. Did you get stopped any other place in New York City? A. I did.

689 *By the Court.*

Q. When? A. Well, I would not know exactly the date.

Q. You would know the year, wouldn't you? A. Well, in that time in 1938.

Q. Not in 1937? A. Well, no, I do not think so.

Q. Well now, what part of 1938? A. Well, I was stopped about in the middle of the summer.

Q. 1938? A. 1938.

Q. Would that be before or after the 4th of July? A. Well, around that.

Q. That is what you call the middle of the summer? A. Yes.

Q. Well, do you call Decoration Day in the summer?

690 A. Yes, I do.

Q. Was that before the summer, according to your idea of what the summer is? A. Yes.

Q. That is before the summer or is it in the summer? A. It was around July.

Q. You are outdoors a good deal driving a truck. When does the summer begin up in Connecticut? A. Well, we didn't get no summer up there yet. We just had snow.

Q. When does the summer begin? A. Oh, around the first of May or something like that.

Q. Well, when is it? A. Oh, I should say around July.

Q. July? A. Yes, around July.

Q. Now, did this occasion that you mentioned when you were stopped occur in May or June or July of two years ago? A. That is right.

Q. Which? A. Well, around——

Q. Which? It did not happen three times at once. A. Well, it happened within three months then.

Q. Well, which month? A. Well——

Q. It is only two years ago. Don't you remember that? A. Well, I don't know. I can't remember that far back.

Q. Well, is that the first time you were ever stopped? A. Well, that was the first time, yes. 692

Q. And you had been driving all during the year 1937? A. Yes, I was.

Q. You were not stopped at all? A. No, sir.

Q. And you drove in 1938 for several months before you were stopped? A. Yes.

Q. And you do not know now what month it was you were stopped? A. No, I could not say.

Q. You could not say? A. No, I could not say.

Q. It might have been May? A. Yes.

Q. It might have been July? A. That is right.

Q. And you cannot remember any more definitely, and you cannot be any more sure of one than the other? A. No, I could not.

By Mr. Marks. 693

Q. Do you remember one occasion when you were stopped at the Spearbox Company? A. Yes, I was stopped there.

By the Court.

Q. When was that? A. Well, I would not know the exact date.

694 *Edward Deptula—For Government—Direct.*

Q. Well, was that before or after the previous occasion that I just asked you about? A. After.

Q. That was after? A. That was after.

By Mr. Marks.

Q. Was DeRoches there? A. Yes, sir, he was.

Q. At the same time? A. He was.

Q. Who stopped you there?

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Mr. Marks: Now, if your Honor please, the prior
695 witness testified that that was before Decoration Day, some time in May of 1938. I submit that is enough of a basis.

The Court: I have sustained the objection, Mr. Marks. You will have to get some further proof as to date.

Mr. Marks: That is all of this witness.

The Court: Any cross-examination?

Mr. Murray: None, if your Honor please; but I would like to move to strike out his testimony as not pertinent to the issues.

The Court: I will allow it to stand subject to a motion to strike out if not connected.

Mr. Boudin: Will your Honor give us an excep-
696 tion in the meantime?

The Court: Certainly. That is all; witness excused. Call the next witness.

(Witness excused.)

The Court: Before the next witness takes the stand we will take a recess for five minutes.

(Short recess.)

Mr. Marks: I will call George Steller.

GEORGE WILLARD STELLER, residing at 4 Huntington Avenue, Shelton, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Steller, where are you employed? A. Theodore R. Steller, Shelton, Connecticut.

Q. Is that a trucking company? A. That is right.

Q. Are you a driver? A. That is right.

Q. How long have you been employed there? A. Pretty near four years.

Q. Where do you drive from and to? A. From Shelton 698
to New York.

Q. In 1937 about how many trips a week did you make into the City? A. Well, some weeks two and some weeks three.

The Court: No. How many did you make?

Mr. Marks: He said some weeks two and some weeks three.

The Court: Oh.

Q. Are you a member of any labor union? A. Yes.

Q. What union? A. 445.

Q. Is that a Yonkers local? A. That is right.

Q. Do you know of what International? A. Interna- 699
tional Brotherhood of Chauffeurs, Teamsters, Stablemen and Helpers.

Q. How long have you been a member of that union? A. About two years.

Q. Now, in 1937, by what road did you approach New York City? A. Boston Post Road.

Q. In that year were you ever stopped in your truck on the Boston Post Road? A. No—oh, yes, I was stopped in the Bronx.

Q. In the Bronx? A. That is right.

Q. Was that on the Boston Post Road? A. That is right.

Q. Do you remember approximately when you were first stopped? A. No.

Q. Are you fairly certain that it was in 1937? A. Yes.

Q. Do you remember whether it was the first part of the year or the latter part of the year? A. The latter part of the year.

Q. And will you tell us the circumstances under which you were stopped?

701 Mr. Murray: I object, if your Honor please, on the ground that the time has not been established bringing it within the issues of the indictment.

The Court: He said the latter part of 1937.

Mr. Murray: I submit, your Honor, it seems to me that is too vague and indefinite.

The Court: Overruled.

Mr. Murray: Exception.

Q. Tell us the circumstances under which you were first stopped. A. Well, the fellows at the curb hollered at me to stop, and I stopped, not suspecting anything; and they asked me if I was a City man, and I——

702 Mr. Maguire: May I ask, if the Court please, that the witness speak up? I cannot hear him.

The Court: Yes. You will have to speak up. I can hardly hear you myself, and I am sure the jurors cannot. They are much farther away.

A. (Continued) The men on the curb hollered at me and motioned to me to stop, and I stopped, and they asked me——

Mr. Murray: If your Honor please, I move to strike it out. It is unconnected.

The Court: I will accept it. Overruled.

Mr. Murray: Exception.

Q. Go ahead. A. They asked me if I had a City man, and where he was, and so forth.

Q. Not "and so forth". Please tell us the full conversation. A. Well, it is pretty hard to remember the full conversation, but that was the text of it.

Q. Well, can you remember any more of the conversation? A. Well, they told me they would see me the next day and would make me have a union man on the truck, and they would call up the boss and make sure they would 704 have a union man at work in the City.

Q. Did you unload the truck yourself that first time? A. Oh, yes.

Q. And did you see the men the next time you were in New York? A. Well, I cannot remember.

Q. Were you ever stopped after that first occasion? A. Not on the Post Road.

Q. Where were you stopped after that? A. In the City, at piers and Tenth Avenue at 25th Street.

Q. What is there? A. That is a warehouse where you pick up freight.

Q. What warehouse? A. R. C. Williams & Company.

Q. Is that a wholesale grocery concern? A. That is right. 705

Q. You were stopped where you had pickups and deliveries; is that right? A. That is right.

Q. Can you tell us how often you were stopped up to the end of May, 1938? A. Well, not exactly; approximately every day.

Q. Every time you went into the City? A. That is right, at one place or another.

Q. And were they always different men or the same men? A. Well, many times they were the same and sometimes they were different.

Q. Do you know who they were? A. Well, I know some of them.

Q. Will you tell us the names of those you know? A. I know Radph Siciliano and Gus Siciliano, and others I can't remember.

Q. Anyone else? A. Well, there was a fellow known as Bill Simpson, Joe Bender, and a few more.

Q. Mr. Steller, will you please stand up, and if you want to, step down from the witness stand, and look around
707 this court room and tell us if you see any of those people here. A. (Witness steps down.)

Q. You can approach closer if you wish and take your time. A. The second fellow in the last row is Joe Bender.

Q. Second fellow from which end? A. This end (indicating).

Mr. Marks: Does your Honor wish him to approach closer?

The Court: Yes.

Q. Will you go closer?

The Court: Step over and point him out.

A. (Witness approached and pointed at a man.)

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Mr. Marks: May we have that man stand up?

(A man stood up.)

Mr. Marks: Now, may the clerk call the name of Joseph Bender?

The Court: Yes.

The Clerk: Joseph Bender.

(A man stood up.)

The Court: The person responding to the name of Joseph Bender as called by the clerk is the same person pointed out by the witness.

Mr. Marks: All right.

Q. Do you see anyone else, Mr. Steller? A. Yes; the second man in the second chair is Simpson.

The Court: Will you go down and indicate?

Mr. Marks: May we have him stand up?

The Court: Well, what do you claim his name is?

Mr. Marks: William Simpson.

The Court: All right. The clerk will call the 710
name William Simpson. Is he here?

The Clerk: William Simpson.

(A man stood up.)

The Court: The person who responds to the name William Simpson is the same person identified by the witness.

The Witness: I believe that is all I know.

Mr. Marks: All right.

(Witness returned to stand.)

Q. Now, how often did Joseph Bender stop your truck? A. Oh, several occasions.

Q. Do you remember where? A. At R. C. Williams.

Q. And did you have any conversations with him on 711
those occasions? A. Well, yes.

Q. Tell us what you said and what he said? A. Well, he just told me that hereafter I would have to have a union man on the truck. And I told him I did not understand why; no reason why I could not take care of the truck just as well as he could. And he said that was not the rules of the union; the union claimed you had to have a City man on the truck in the City; their own men could not deliver

loads in the City, and he said he was going to get in touch with the boss and see that I did have a City man on the truck.

Q. By the way, how long did it take you as a rule to drive from Shelton to New York? A. Oh, three and a half or four hours.

Q. Well, what did you say to Bender when he told you that? A. Well, I told him we would see. I did not think he was going to put it over and that he could make us put a City man on the truck.

Q. What did he say when you told him that? A. He said he could.

713 Q. Did he say how? A. Well, he was going to see that we did have a City man put on the truck.

Q. Did he tell you how he would see to it?

The Court: No, not "how". What did he say?

Q. What did he say on that subject, Mr. Steller? A. He said he was going to have a City man put on the truck, that is all there was to it, whether we liked it or not.

Q. Was he alone when he would stop your truck? A. No.

Q. How many people were usually with him? A. Oh, there was two or three and sometimes more.

Q. Were you alone as a rule? A. Yes, generally.

Q. Now, how often did Simpson stop your truck? A. I
714 believe he only stopped it once.

Q. Where was that? A. At R. C. Williams.

Q. Now, will you tell us what happened on that occasion? A. Well, on that occasion it was a Saturday afternoon and I guess he wasn't working, and some of his friends weren't, and we were loading up at R. C. Williams, and he came over—I had to call up for another truck to come down and take part of the load, because I was overloaded, and the other truck came down, and he would not

let him back in and load up; so I attempted to take the loaded truck away from there, and some of his friends chased after me and made me come back. And he threatened me then he was going to do this and that to me.

Q. Well, tell us just what he said. A. He threatened me to throw me in the river.

Q. That was William Simpson? A. Yes.

Q. What else did he say he would do to you? A. Well, he was going to do a job on us.

Q. Tell his words as best as you can remember them: A. I cannot remember his exact words.

Q. You remember he said he would throw you into the river? A. That is right. 716

Q. What else, specifically? A. He was going to see that we did not get out of the City with the trucks.

Q. How many men were with him when he said that? A. Oh, it was quite a crowd of them there.

Q. About how many? A. Oh, eight or ten, I guess.

Q. And how many were with you? A. Well, there was one other driver, and I believe there was a young fellow that rode down with the truck.

Q. So two or three? A. That is right.

Q. Now, what else did Simpson or the others in that group say? A. Well, they were going to make us hold the trucks there until we called up the boss and had him put a City man on the truck to load the remaining freight up.

Q. Did he ask for a City man for just the one truck? A. Oh, yes. He was going to make us pay for loading the 717 truck.

Q. He did not ask you to pay for your truck, too, did he? A. I don't remember that.

Q. Do you remember whether you paid him on that occasion? A. No, we didn't.

Q. What happened? A. Well, he finally decided to let us go if we left the rest of the freight there, and so we went away and we waited and came back later that night and got the rest of the freight.

Q. But you did not carry away all of the freight then, did you? A. No.

Q. How many hours were you delayed in getting the rest of your load? A. Oh, I imagine it was about 2 o'clock in the afternoon, and we waited until about 8 o'clock that night, and then we come back and put the freight on.

Q. Do you know whether Simpson was employed anywhere at that time? A. Well, he was employed at Liberty Forwarding.

Q. And that is an interstate trucking company? A. Yes.

Q. Did any of those men do anything to you? A. No.

Q. They just talked to you? A. Yes; kind of roughly.

719 Q. How much money did you pay to the men when they stopped you? A. I never paid them anything.

Q. Did your boss? A. He never paid them—if he hired a man to load the truck at R. C. Williams, why, R. C. Williams paid it and charged it to our account.

Q. You do not know how much that was, do you? A. No. It was around $9.

Q. Around $9 a trip? A. Yes.

Q. You don't know how often those payments were made, do you? A. Well, at one time it was made every day when that man was hired to load the truck.

Q. Did any of those 807 men ever drive your truck? A. Yes.

Q. When you hired them did you turn your truck over to them? A. Yes.

723 Q. And did you stay on the truck? A. Oh, just for a few days, and then we let the driver take it himself as long as he could handle the truck all right.

Q. I couldn't quite hear that. A. We just stayed there for a couple of days to see if he could handle the truck all right, and then he drove the truck himself.

Q. How long did it usually take to load and unload your truck in New York City? A. Well, three or four hours. Not over five.

Q. Three or four hours and not over five? A. That is right.

Q. Did it sometimes take less? A. No, I don't believe so.

Q. And did the 807 men get the same pay regardless of how long it took to load and unload your truck? A. Oh, yes, no matter how long it took they got a day's pay for it.

Mr. Marks: That is all.

The Court: Cross-examine.

Mr. Boudin: If your Honor please, as to this witness I would like to ask the Court's permission that his cross-examination be deferred. I would like to get certain information before I cross-examine. 722

The Court: Well, you may proceed with his examination until it reaches the point where it is necessary to suspend it for the purpose of obtaining whatever information you desire.

Mr. Boudin: Well, if your Honor please, I would just be groping in the dark if I attempted to cross-examine him at this point.

The Court: Well, the Court thinks there are preliminary matters that can be inquired into at this time.

Cross-examination by Mr. Murray.

723

Q. Mr. Steller, how many trucks did your concern operate? A. At this time altogether or just in New York City?

Q. Well, from the latter part of December, 1937, up to, say, the first of June, 1938. A. Well, it was operating one or two trucks in New York City.

Q. And was that a 10-ton truck? A. One 10-ton truck, yes.

Q. And do you know how many tons of merchandise you ordinarily trucked? A. Well, from 8 to 10; sometimes 10½; something like that.

Q. Did you sometimes have 15 tons on your truck? A. Possibly.

Q. Or more than 15 tons? A. No.

Q. Now, you say that you are a member of Local 448, a union in Yonkers? A. 445.

Q. 445, rather. A. Yes.

Q. Are you? A. Yes.

Q. When did you join the union in Yonkers? A. It was in August of 1938, I believe.

725 Q. So that between the latter part of 1937 and June first of 1938, you belonged to no union? A. That is right.

Q. And at the times that you have testified that the defendant Bender and the defendant Simpson talked to you, you did not belong to a union; is that correct? A. That is correct.

Q. Well now, where do you reside? A. Shelton, Connecticut.

Q. Is there a union of drivers in Shelton, Connecticut? A. No, there is not.

Q. Is there any union in Connecticut? A. Yes.

Q. Whereabouts? A. Oh, Bridgeport, Waterbury, New Haven, Hartford, I imagine.

Q. How far is Waterbury from Shelton? A. 18 miles.

726 Q. When you joined the union you came to New York to join the union; is that correct? A. That is correct.

Q. Did you have a residence in Yonkers? A. No.

Q. Did you pay your dues to the union yourself? A. Yes.

Mr. Marks: I object to this as immaterial.

The Court: I will allow it.

Q. Do you know who the president of the union in Yonkers is?

Mr. Marks: I object to that as immaterial.
The Court: I will sustain that.

Q. Have you ever gone to a meeting of the union in Yonkers? A. No.

Mr. Marks: Same objection.
The Court: Overruled.
The Witness: No.

Q. Have you ever been inside of the union rooms in Yonkers at any time?

728

Mr. Marks: Same objection.
The Court: Overruled.

A. Yes.
Q. Do you know the address of the union in Yonkers? A. Yes; I believe it is 480 South Broadway.
Q. When were you last there? A. I don't know. Quite a few months ago.

Mr. Boudin: If your Honor please, it is absolutely impossible to hear the witness here. I hate to interrupt.
The Witness: Quite a few months ago.

Q. Well, have you been there within a year? A. Yes. 729

The Court: Speak louder.
The Witness: Yes.

Q. Now, what time ordinarily between the winter of 1937 and the summer of 1938 did you start out from Shelton with your truck? A. It all depends on the load we had to bring to the City.

Q. Well, did you sometimes carry a 15-ton load? A. No.

Q. Did you ever carry a 10-ton load? A. No.

Q. Well, on an average what was tonnage of the load on your truck? A. Anywhere from a half a ton to 5 or 6 tons.

Q. Between Shelton and New York did you pick up deliveries at any other points? A. No.

Q. Did you pick up deliveries in New York when you reached the New York City line? A. No.

Mr. Marks: I object to the question as indefinite. "Pick up" and "delivery" are contradictory.

731 The Court: I will allow him to state. He seems to know what the question called for. He answered before you objected.

Q. Was there any specified time when you left Shelton on your trip to New York in the morning? A. No, we left any time we pleased.

Q. How many hours did it take you to get from, say, Shelton to the R. C. Williams Company? A. Well, 3 or 3½ hours; 4 hours.

Q. How long did it take you to unload your truck? A. It depends on the load. I can't give any specific number of hours or minutes.

The Court: Pardon me.

732 *By the Court.*

Q. Did you go direct from Shelton to the R. C. Williams Company? A. No.

Q. Did you stop at any intermediate points? A. We stopped after we came to the City and made deliveries.

Q. Made deliveries? A. That is right.

Q. Did you take on any merchandise? A. Very seldom.

By Mr. Murray.

Q. Well, as his Honor has asked you, did you make other deliveries in New York City before you reached R. C. Williams? A. Yes.

Q. Ordinarily how many deliveries did you make on your trip from Shelton after you reached New York City? A. Oh, anywheres from 5 to 8.

Q. What character of merchandise did you truck? A. Well, we take some mill cartons and sometimes we had heavy machinery.

Q. Now, what did the machinery consist of? A. Sugar mill parts and rolls. 734

Q. Made of cast iron and some other metal, was it? A. That is right.

Q. And were there parts that weighed 500 pounds or more? A. Yes.

Q. Some of them a ton? A. Yes.

Q. And when you carried that character of machinery did you have a helper on your truck? A. Sometimes when the machinery was heavy, yes.

Q. And when it was not heavy did you drive the truck unattended by any helper? A. That is right.

Q. Where did you deliver the machinery? A. Oh, to piers and private factories.

Q. Now, how long would you say when you were delivering machinery that it took you to get rid of your load of machinery in New York? A. 2 or 3 hours; sometimes 735 I would get hung up at a pier and it would take us a little longer.

Q. Now, say if you left Shelton at 10 in the morning would you arrive in New York about 2 or before 2? A. Yes.

Q. About what time would it take you to get from Shelton to the R. C. Williams Grocery Company, for instance? A. I have answered that question once; 3 or 3½ hours.

736 *George Willard Steller—For Government—Cross.*

Q. Then ordinarily how long did it take you to make the deliveries in New York? A. A couple of hours probably.

Q. That would be about 5½ hours that you would be on your truck after having left Shelton; is that correct? A. That is correct.

Q. Then while you were in New York did you pick up merchandise from any other house to truck back to Connecticut? A. Well, very seldom. Our biggest item was R. C. Williams.

Q. Well, were you accustomed to picking up merchandise from any other house to re-truck to Connecticut? A.
737 Austin, Nichols in Brooklyn we picked up for a while.

Q. What character of merchandise did you get from Austin, Nichols? A. Groceries.

Q. Where did you truck them to? A. Shelton.

Q. Any place else in the State of Connecticut besides Shelton? A. That was our warehouse, and we distributed that throughout the state after that.

Q. Now, if you started out at 10 in the morning from Shelton and made your deliveries in New York City, and on occasions when you picked up other merchandise, how long did it take you for the trip back and forth from Connecticut?

Mr. Cahill: I object to it as not within the scope of the direct.

738 The Court: Overruled.

A. Well, you mean the entire trip?

Q. Yes. A. Well, about 10, 11, 12; maybe 14 hours.

Q. Were you ever on your truck as long as 18 hours?

Mr. Cahill: I object to that, your Honor, and I ask to be heard on that. It is not within the scope of the direct examination, and I ask leave to argue the point.

The Court: I think your question is rather indefinite. Do you mean in making deliveries from Shelton, Connecticut, to New York?

Mr. Murray: And then return to Connecticut, if your Honor please.

The Court: 18 continuous hours?

Mr. Murray: Yes.

The Court: I will overrule the objection.

Mr. Cahill: If your Honor please, I should like to add the further objection that it is immaterial, and I respectfully ask the Court to hear me on the point of law involved.

The Court: Proceed. 740

Mr. Cahill: If your Honor please, it seems to me that the question is objectionable as being immaterial, because if there has been an interference with interstate commerce, as I see it, under the existing cases, the use of unlawful means, no matter how legitimate the end, is a violation of the law. Now, we take the positon here that on the direct testimony of the witness not only has there been unlawful interference with interstate commerce, but as well there is no lawful object; that the only object here sought is to cause this witness to step down from his truck, and that that is not a proper object of a local labor union; that the effect of that act is merely to throw the witness out of work, cause him to turn over his livelihood to a member 741 of this union, and to cause that result to be brought about by unlawful means, threats of throwing this witness into the river. I say to your Honor that it cannot be a legitimate object of a labor union to do this. There is no attempt, on the witness' testimony, to unionize this man into 807. Your Honor has already heard testimony to the effect that this local would not take out of town drivers

into their ranks; that the insistence was that a gate in effect be established at the entrance of our City where the drivers from out of town would have to step down and allow one of these New York City drivers to step up.

If your Honor will bear with me on this question, let us suppose a mythical trip from Boston to New York, and let us say the trip starts out from Boston with a Boston driver. On the conduct thus far shown in the case, if this be material, it would then be lawful on the truck arriving at Providence to compel the Boston driver to step down; and on
743 the truck arriving at New London, to compel the Providence driver to step down, and so on, with the truck coming into New Haven, until finally when it comes to New York, the New Haven driver has to step down. It would be, in the language of the Attorney General in a recent speech, a Balkanizing of the United States, and a setting up of separate barriers between our cities.

I submit to your Honor that there is nothing shown here which gives basis for the legitimacy of the end or the means in compelling these men to step down, and that there is no possible relevancy as to how long they may work or what wage they may get in other communities, for the reason that, practically speaking, if that is to be gone into then
744 we, in turn on redirect, must go into the question of living costs in those communities from which these men stem, and attempt to demonstrate that under the conditions and circumstances in which they live at their places of business, they are being fairly paid; do you see? We should have to undertake that.

Now, there has been no demonstration here. Rather, the contrary has been shown, of any at-

tempt to improve, let us say, the working conditions of any witness. That is not involved here. The interest of this local is merely to have their own men put up and not to invite these men to join their organization. So that I submit, your Honor, with all due respect, that it is entirely immaterial and beyond the scope on the decided cases on this line of examination.

The Court: Well, Mr. Cahill, we are not going into any question here about the rates of labor in any other community or the living costs in any other community. I will, however, allow this witness to state whether on any given trip from Connecticut to New York and back to Connecticut he worked as many as 18 hours. 746

The Witness: May I answer?

The Court: Yes.

The Witness: No, I do not believe so.

By Mr. Murray.

Q. Well, could you tell us what was the longest duration of continuous hours that you worked on the job?

Mr. Cahill: Now, if your Honor please, I do not mean to interrupt constantly and press objections, but this point of law will come up during the trial, and I think we might as well get your Honor's ruling on it; so for the time being I will object until I get—— 747

The Court: I will overrule the objection.

A. Could I have the question again, please?

Q. (Read.) A. Well, possibly 16 hours on the job, but not on the truck.

Q. Well, by "on the job" you mean that part of the time was consumed in loading and unloading and reloading? A. And waiting, and meals, and so forth.

Q. So it is safe to say that you did work continuously 16 hours? A. Well, it depends on how you say it. If you say it one way it is unlawful, and if you say it another way it is not unlawful.

The Court: He did not ask you that.

Q. I did not ask you whether it was lawful or unlawful. I see you anticipate what I am coming to. To take your suggestion, is there any regulation in the State
749 of Connecticut by the Motor Vehicle Department that prohibits you from working continuously over a certain number of hours on a motor vehicle which you drive?

Mr. Cahill: That I object to as immaterial.

The Court: Sustained.

Mr. Murray: I respectfully except, if your Honor please.

Q. Well, when you got into New York and after you unloaded this machinery you were pretty tired, weren't you?

Mr. Cahill: That I object to, your Honor.

The Court: Sustained.

750

Q. Didn't you welcome the assistance of the members of the local here in New York? A. No.

Q. Did you welcome their assistance in the unloading of this heavy machinery? A. No.

Q. Did anyone ever strike you? A. Beg pardon?

Q. Did anyone ever strike you, connected with this union? A. Yes.

Mr. Cahill: What was the answer?
The Witness: Yes.

Q. Who struck you? A. I don't know the man's name and I could not get it.

Q. Was it Bender? A. No.

Q. Was it Simpson? A. No.

Q Was it anyone who sits here among these defendants on the right near the wall? A. I don't recognize him.

Q. You say that Simpson said that he would put you in the river? A. That is right.

Q Now, what was the date of that declaration on the part of Simpson to you? A. I don't remember. It was 752
a Saturday.

Q. What month was it? A. I can't remember.

Q. What year was it? A. I believe it was in 1937.

Q. Do you know whether or not it was in 1937? A. Yes, it must have been in 1937.

Q. Who was present with you, if anybody, when Simpson said he would put you in the river? A. A driver and a young man who was riding with the other driver.

Q. The name of the driver is what? A. Haversat.

Q. And the name of the young man is what? A. I don't know; I only know him as Paulie.

Q. Have you seen him recently? A. Yes.

Q. Is he still employed by your concern? A. He was not employed by our concern.

Q. The young man that you speak of was on another 753
truck, you say? A. He was in the truck that came down to take part of my load.

Q. And whose truck was that? A. Theodore R. Steller's.

Q. Was that a truck that worked out of your outfit? A. That is right.

Q. I see. Now, you said that Mr. Bender, one of the defendants here, said something to you; is that right? A. Yes.

Q. That he threatened you? A. Well, I don't know—he told us that we would have to put a City man on the truck.

Q. Is that all Bender said to you? A. That was his idea; I cannot remember the exact words.

Q. Did he tell you that that was a union regulation? A. He said there was a union regulation to have a City man on the truck in the City.

Q. When did that conversation take place? A. That must have been in 1937, about.

Q. What month was it? A. I can't remember the month or the day.

755 Q. Well, did you make any notation of those conversations? A. No. I was having trouble with him every day We wasn't going to write down every day when it was and everything.

Q. Did you make any report of Simpson's threats to throw you into the river to any law enforcement agency here in the City of New York? A. No.

Q. Did you go to the police? A. No.

Q. Did you ever make a complaint to the police department? A. No.

Q. Did you make any written report that Bender had told you that you had to have someone on the truck that was connected with Local 807? A. No. I never made no written report, no.

Q. Did you ever make any written report to anyone 756 that Simpson had threatened to throw you in the river? A. No. We was threatened every day with this and that and the other.

Mr. Murray: May I move to strike out the last?

The Court: Proceed.

Mr. Marks: I submit it is proper, your Honor.

Q. Did you ever put in writing to any law enforcement agency in the State of New York any threats that you allege that Simpson made against you?

Mr. Marks: I object to that as already answered.

The Court: Well, this question broadens out to the State of New York. I do not know myself just what you meant by it, and I do not know whether the witness knows what you meant by it. I do not see any objection to his answering.

The Witness: Will you repeat it, please?

Mr. Murray: Please read it, Mr. Reporter. 758

Q. (Read.) A. No.

Q. When was the first time that you ever, if at any time, stated it to anyone that represented law enforcement agencies what you testified to here today?

The Witness: May I have that question, please?

Mr. Murray: Will you read it, Mr. Reporter?

Q. (Read.) A. I don't understand that.

The Court: Do you know what he means by "law enforcement agencies"?

The Witness: Yes.

Mr. Cahill: If your Honor please, I submit there has been no proper foundation laid. After all, he has been asked about everything except the Federal Government. 759

Mr. Murray: I assumed that was a law enforcement agency, too.

Mr. Cahill: He has been asked specifically excluding that, and I submit there is no proper foundation laid.

The Court: Overruled.

The Witness: I didn't understand whether he means including the Federal Government or not including the Federal Government.

The Court: You can assume that the Federal Government is a law enforcing agency in the State of New York as well as in all the other 47 States of the Union.

The Witness: When was the last time or the first time?

Q. Yes, the first time. A. I don't understand.

761 The Court: The stenographer will repeat the question again.

Q. (Reread.) A. Well, the first time was last month.

Q. That is the month of March, 1940? A. That is right.

Q. Do you happen to know a man named Adelizzi? A. No.

Q. You don't know him? A. No.

Q. Did you ever attend any meetings of the Over-the-Road Truckers? A. No.

Mr. Murray: That is all.

The Court: Does any other counsel desire to examine?

762 Mr. Boudin: If your Honor please, I renew my request to defer any further cross-examination of this witness until I have a chance to obtain certain information which I would like to have as a basis for cross-examination.

The Court: Well, does this information relate to books and papers or what?

Mr. Boudin: Well, it consists of certain papers and also certain rules and regulations. I did not know this witness was going to take the witness stand today.

The Court: When will you have these papers?

Mr. Boudin: Well, I should say by the day after tomorrow, in the morning. I would like to have tomorrow's day for that purpose.

The Court: Well, you will have to be more specific in indicating to me the fact that you are unable to cross-examine this witness without some definite information. I can foresee that this is likely to be a protracted trial, and I do not intend now to have a situation arise here like a car spotted on every track in a railroad yard, and have to pick them all up at the end of the trial. If there is any just reason shown me that you are not prepared 764
now to cross-examine this witness, I will entertain an application, but there must be some basis for it.

Mr. Boudin: I can state to your Honor, by the way, first of all—we have called your Honor's attention before the trial to——

The Court: You do not need to go into that. That is not proper here.

Mr. Boudin: All right. If your Honor please, I waived cross-examination of the last witness that was on the witness stand because I assumed they started from Shelton. Now, during the recess, I was informed they started from New London. I did not know that. I did not know it in advance, and I could not know it in advance. Now, there are some things about this witness' testimony 765
that I expect to find out about.

The Court: There has not been anything in the testimony of this witness that the trucks operated by his employer started from New London.

Mr. Boudin: That is perfectly true. I did not ask him the question and I did not know about it.

The Court: Well, you may ask him. He is here.

Mr. Boudin: But, your Honor, I mention th
only by way of illustration. There are other thin
that we must find out about before we can intel
gently cross-examine. Now, Mr. Murray has do
a general job, so to say, but I have certain oth
kind of questions which relate to labor unionism—

The Court: I will direct this witness to co
back here on Friday morning——

Mr. Boudin: Thank you.

The Court: One moment. Whether you will
permitted to cross-examine him or not will depe
upon your satisfying me that the information th
767 you say you are now required to secure was need
for that purpose, or whether you could not ha
cross-examined him now without it.

Mr. Boudin: I assure your Honor that I wou
not make a statement to your Honor about any su
thing——

The Court: You do not need to give any assu
ance because I am accepting your fulfillment of yo
obligations as a member of the bar without a
assurance.

Mr. Boudin: I may say to your Honor——

The Court: I am merely indicating to you no
that there is a conditional direction attached to t
return of this witness here on Friday, so that y
do not get into any general understanding that t
768 cross-examination of witnesses can be suspended
the will of anybody. Mr. Witness, you return he
Friday morning at half-past ten.

The Witness: Is that all?

The Court: That is all.

Mr. Marks: Your Honor, I have some redire

The Court: You have some redirect?

Mr. Marks: Yes.

Mr. Boudin: I want to state to your Honor now that I tried to get some information from Mr. Maguire——

The Court: Stop. We are here to listen to testimony and not to speeches. Proceed, Mr. Marks.

Redirect examination by Mr. Marks.

Q. Mr. Steller, will you now tell us in full about the episode that Mr. Murray questioned you when you were struck? A. I don't understand you.

Q. When you were hit.

The Court: You testified that you were struck by one particular person. Mr. Murray asked you if you made any report about that, and you said that you did not make any report about it; that you were struck on other occasions. Now, what do you want to know—— 770

Mr. Maguire: May I object to the district attorney's question? The witness has already testified. The witness has said that he does not know the man that struck him, and I object to it as not binding on these defendants; certainly not on the defendant union.

The Court: Overruled.

Mr. Maguire: Exception.

A. I don't believe that I testified I was struck by anyone else. 771

Q. You testified you were hit once, is that right? A. Yes.

Q. Will you tell us the circumstances on that occasion? A. I backed into this warehouse of R. C. Williams, and this fellow come from across the street and he told me I could not load up there because I did not have a City man on the truck; and I told him to get off the truck and I would load

up the freight myself; and he finally got off the truck and went across the street and got some more fellows and he come over and one of those fellows hit me.

Q. What happened after that? A. After they hit me they beat it, and I loaded up the truck and went home.

Mr. Marks: That is all.

Recross-examination by Mr. Murray.

Q. What part of your body were you struck in? A. The chin.

Q. Were there any marks on you? A. Not now.

773 Q. At that time? A. Yes.

Q. What kind of a mark did you have on your chin? A. Just bruises, and the inside of my mouth was cut.

Q. Were you knocked down? A. Yes.

Q. Was there a policeman near by? A. No.

Q. Do you know whether or not there is a policeman, or was at that time, stationed nearby R. C. Williams? A. I could not tell you if there was or not.

Q. Do you know whether or not there is a police station nearby? A. No.

Q. Did you make any complaint to anyone connected with R. C. Williams about your being struck? A. There was a watchman there and I asked him if he knew the fellow's name, and he said no, and I asked him would he tell

774 me if he did know, and he said no.

Q. What time of the day or night was it? A. I believe it was around half-past seven or eight o'clock.

Q. At night? A. I made a special trip to the City to pick up.

Q. You don't know the name of the man who struck you? A. I couldn't get it. Nobody would give it to me.

Q. Or his description? A. No.

Q. It wasn't Bender? A. No.

Q. It wasn't Simpson? A. No.

The Court: Well, you don't see the man in court now who struck you, do you?

The Witness: No.

The Court: Anything further, Mr. Marks?

Mr. Marks: No.

The Court: Has anyone else any further questions now?

Mr. Maguire: May I at this time move to strike out the testimony of the witness with reference to the alleged striking on the ground that it is not binding on the defendants.

The Court: I will deny it.

Mr. Maguire: Exception. 776

The Court: Mr. O'Grady, pass this list to the foreman and he may pass copies on to the other jurors.

(Witness excused.)

GUSTAVE HAVERSAT, residing at 30 Hull Street, Shelton, Connecticut, called as a witness on behalf of Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Haversat, where are you employed? A. Mr. Steller's, Theodore Steller's. 777

Q. That is the trucking company? A. Yes, sir.

Q. Located in Shelton, Connecticut? A. Yes, sir.

Q. How long have you been employed there? A. Somewhere around five years.

Q. Do you drive a truck to New York City from Shelton? A. Yes, sir.

Q. Was your truck ever stopped in 1937 in New York City? A. Yes, sir.

Q. Where in the City? A. We had been stopped at R. C. Williams.

Q. Do you remember the first time you were stopped there? A. I can't remember that far back. I didn't know just when this would ever come back, you know.

Q. Please keep your voice up a little louder. A. I didn't know that this would ever come up. So I didn't keep in mind, you know, about it. I had been stopped so many times, you know.

Q. Were you ever stopped on the Boston Post Road? A. Yes, sir.

Q. In 1937? A. No, it wasn't in 1937. It was this year
779 I have been stopped.

Q. You were never stopped in 1937 on the Boston Post Road? A. Not that I remember.

Q. Were you stopped at any other place than R. C. Williams in 1937? A. Why, I have been stopped at different piers.

Q. Similarly in the early part of 1938?

Mr. Murray: I object, if your Honor please.
The Court: Sustained.

Q. Were you ever stopped in the early part of 1938?

Mr. Murray: I object.
The Court: Sustained.

780

Q. Were you ever stopped before May 31, 1938?

Mr. Murray: Your Honor——

A. I don't think I could remember. I won't say that I did.

Q. After the first time you were stopped in New York City in 1937 how often were you stopped? A. Oh, every time I came down to the City.

Q. Who stopped your trucks?

Mr. Murray: May I ask, if your Honor please, that the time be fixed.

The Court: Yes.

Q. Do you remember in what part of 1937 you were stopped? A. No, I can't remember that.

Q. Do you remember whether it was the early part or latter part of the year?

By the Court.

Q. Was it in hot weather or cold weather? A. It was 782
during the summer.

Q. Of 1937? A. Yes, of 1937.

Q. How many times did you come down a week? A. About twice; sometimes three times a week.

Q. Each time you came down were you stopped? A. Practically every time when we wanted to unload or load.

Q. Where were you stopped? A. At different piers and where we had to make our pickups.

Q. But not on the road? A. No.

Q. Coming into New York? A. No.

By Mr. Marks.

Q. Do you know any people who stopped your truck? 783

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Mr. Murray: On the ground that the evidence does not justify the question.

The Court: I sustained the objection.

Mr. Murray: Oh, pardon me, your Honor.

Q. Do you know who stopped your truck on any of those occasions?

Mr. Murray: I object.

The Court: I will let him say whether he does or not.

Yes or no.

A. Will you please ask that question again?

Q. (Read.) A. I can't remember that far back, but I can tell you which one stopped me later on.

785 The Court: No, no. We are talking now about 1937.

The Witness: I can't remember the names that far back.

Q. Well, would you please stand up and look around this court room and tell us if you see anybody here who stopped your truck.

Mr. Murray: I object, if your Honor please, upon the ground that the question has not been brought within the time limit.

Mr. Marks: I was going to say in 1937 or up to May 31, 1938.

The Court: No. Confine yourself to 1937 first.

786 That I will allow.

Q. In 1937? Do you understand the question? A. No, I don't.

Q. Just stand up and look around the court room.

The Court: Do you see anybody in this court room who at any time during the year 1937 stopped your truck or stopped you from loading or unloading a truck anywhere in the City of New York?

The Witness: No, sir.

Mr. Marks: May we have the witness take a little more time in looking around?

The Court: Not unless he wants it. He can take as much time as he needs.

Q. Will you step down from the witness stand, Mr. Haversat?

Mr. Murray: If your Honor please, I object on the ground that the witness——

The Court: No, I will overrule the objection.

Mr. Marks: Let the record show that the witness answered no after a lapse of about—— 788

The Court: No. Just a moment. I am not going to let anybody testify here but the witness.

Mr. Marks: I was asking if the record might show the lapse of time.

The Court: You are not going to make me a witness.

(Witness picks out one of the defendants.)

Q. Walk right over there and pick him out. A. (Witness picks defendant out.)

Mr. Marks: May the clerk call the name of Joseph Bender?

The Court: I don't think that is necessary. I think the jury have observed that Bender has arisen 789 before.

Mr. Marks: May the record then show that the witness has identified the defendant Joseph Bender?

The Court: Yes.

Q. Do you see anyone else? A. This fellow over there (indicating).

Q. Will you go over and pick him out. A. (Witness picks out defendant.)

Mr. Marks: May the record show that the witness has identified the defendant William Simpson?

The Court: Yes.

Q. Now do you see anyone else there? A. No, sir.

Q. All right. You may resume the stand. Now do you remember where you saw Simpson in New York?

The Court: When?

The Witness: When? I couldn't tell you the date.

791

Q. Do you remember where? A. Yes. At 25th Street and Tenth Avenue. 25th Street.

Q. Is that a warehouse? A. A warehouse.

Q. What is the name of it? A. R. C. Williams.

Q. Was anyone else from your company present? A. Yes.

Q. Who? A. Joseph Steller.

Q. Will you tell us what happened on that occasion?

Mr. Murray: Am I to understand this is 1937?

Q. Do you remember when that was? A. No, I can't remember the date.

792

The Court: Well, was it in 1937?

(No answer.)

Q. Did you hear his Honor's question? A. Yes. I think it was in 1937.

Q. Will you tell us what happened on that occasion? A. Well, we tried to pick up there. We couldn't pick up because we didn't belong to no local.

Q. Who said that? A. Mr. Simpson, and I think it was Mr. Steller who was

Mr. Maguire: I am sorry, your Honor, we can't hear.

The Court: We can't hear you.

The Witness: I can't talk very loud because of my throat.

I went to see where the freight was, and I backed in and as I backed in there was a row over it. Mr. Steller—he had a certain book, union book or whatever it was, and he didn't show it at that time, and there was somebody —I don't know whether a police officer or what—I don't think there was any police officer. He went and made him take out his driver's license and book and show him the pin, and they took it away on him. 794

Q. From Steller? A. Yes. So they took the book away on him and I don't remember—I don't think we loaded up that day. We had to hire somebody to load it up.

Q. Do you remember what Simpson said? A. No, I can't remember what he said.

The Court: Do you remember anything he said?

The Witness: I remember he said that any time we came down to the City we couldn't unload unless we hired a union man.

Q. Do you remember anything else he said to Steller? A. Well, there was one thing I heard him say, that if he would be bothering around here he would throw him in the East River. 795

Q. What is it? A. He would throw him in the East River if he was going to fool around in New York any more.

Q. When did Bender stop your truck? A. That was after.

Q. How long after? A. It was in the same year. During the same summer, I think it was.

Q. How often? A. He came up—when I started I stopped at the diner there, the Century Diner to eat. Then I went

to see where my freight was, and I don't know how he happened to see me. So he came and asked me if I had a book, and I at that time—I had a book, a 445 book, Yonkers book.

Q. That is a local of the International Brotherhood of Teamsters? A. Yes. He said they didn't recognize that book down in the City here.

Q. Bender told you that? A. Yes. So he let me load up that day, and he told me to tell the boss to come down and have a talk with him about loading up his trucks. So later the boss had to hire him.

Q. Hire whom? A. Hire Joe Bender.

797 Q. Did Bender work on your truck every time you came to New York? A. Yes, sir.

Q. Did he ever damage your truck? A. No, but one time we delivered a heavy piece of machinery at a pier and the only damage he done—he never used no skids and he smashed up the machine.

The Court: How heavy was it?

The Witness: It fell off the truck.

The Court: How heavy was it?

The Witness: I don't know. Somewhere around two ton and a half.

Q. Did you say anything to him then?

798 Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Q. This is a conversation with a defendant. Did you have any conversation with Bender on that occasion? A. Why, I told him if I had taken it off the truck my way I wouldn't have broken it. He never used no skids. He tried to pull it off. It was on a little tractor, and as he did, he just pulled it off. I don't think he realized, or the man who

was operating the machine. It was pulled off and all of a sudden dropped down.

Q. What did he say to you when you said that? A. I started raising the dickens with him. He told me to keep my mouth shut. He told me that he was driving trucks longer than what I was.

Q. What did he say he would do if you didn't keep your mouth shut?

Mr. Murray: I object to that.

The Court: I sustain the objection.

Q. What else did he say to you? A. He said, "I will slap you down." 800

Q. Was Bender ever alone when he stopped your truck? A. No, there was someone else. I don't know who they are. You haven't got them here.

Q. How many? A. Three besides him, I think it was.

Q. Three usually travelled with him? A. Yes.

Q. Were you usually alone? A. Yes.

Q. On the occasion at R. C. Williams when Simpson was there, how many people were with Simpson? A. I couldn't tell you just how many. I know there was a crowd, about five up to seven; somewhere around that.

Mr. Marks: That is all.

Cross-examination by Mr. Murray. 801

Q. You were present, were you, in 1937 when Steller was stopped for the first time by Bender? Were you? A. Bender was the first one that stopped, but I can't remember the others. You haven't got them in the court room.

Q. At least, was it in 1937? A. Yes, I think it was.

Q. Or was it after June of 1938? A. I think it was in 1937. It has been quite a while. I couldn't keep track of it.

802 *Gustave Haversat—For Government—Cross.*

Q. Did someone ask Steller for his union card on that occasion? A. Yes.

Q. And that was in 1937? A. Yes, I think it was.

Q. Then did Steller have his union card? A. He didn't at that time.

Q. Did he have a union card at that time? A. Yes, sir.

Q. And he had a union button, did he? A. Yes.

Q. Do you chance to know that Steller didn't join the union until 1938?

Mr. Marks: I object to that.

The Court: Overruled.

803 A. I don't know about—I only know what he had——

Q. Do you know what union Steller belongs to now? A. I think 445.

Q. Do you know whether or not Steller belonged to any union before he joined 445? A. That I don't know, but he had a book.

Q. Did he have a book in 1937? A. Yes.

Q. Did he have a button? A. Yes.

Q. Do you know what local it was issued from? A. No, I don't know. I know he had one.

Q. In 1937? A. Yes.

Q. Well, now, in 1937 were you a member of a union? A. No.

Q. Were you a member of a union in the first part of
804 1938? A. In 1938? Some time during 1938.

Q. Do you know what time it was in 1938 that you became a member of a union? A. No. I can't remember that unless I check up on it.

Q. Well, do you know whether or not it was after June 1, 1938? A. It was during the summer time I know.

Q. Of 1938? A. Yes.

Q. Is that correct? A. Some time during the summer of 1938.

Q. What union did you join? A. 445.

Q. That is in Yonkers? A. Yes.

Q. And where do you live? A. Shelton. I lived at that time down in the City when I got my union book.

Q. You lived where then? A. 1244 Westchester Avenue.

Q. That was in New York City, was it? A. Yes.

Q. And not in Yonkers? A. Not in Yonkers.

Q. Did you have any conversation with Mr. Bender, outside of what you have told us when this two and a half ton piece of machinery was broken? A. I don't think—I jumped on him on account of it was broken. I imagine he got, you know—I don't know—he got sore about that happening, you know.

806

Q. It was an accident, wasn't it? A. Well, it could have been avoided, but it was an accident.

Q. You don't claim that Mr. Bender broke the piece of machinery on purpose, do you? A. Why, I wouldn't think anyone who had a job or tried to hold a job would try to break anything. I wouldn't.

Q. So you had an argument with Bender as to how the machinery should have been taken off the truck, is that right? A. But that was after it happened.

Q. Yes, but your argument was about how it should have been taken off the truck? A. Yes.

Q. Is that right? A. Yes, sir.

Q. You said that you would do it one way? A. Yes.

Q. A different way than Mr. Bender did it? A. Yes.

807

The Court: Mr. Murray, we will take a recess now until 2 o'clock.

(Recess to 2:00 P. M.)

AFTERNOON SESSION.

GUSTAVE HAVERSAT, resumed the stand.

Mr. Murray: May I proceed, if your Honor please?

The Court: Go right ahead.

Cross-examination (continued) by Mr. Murray.

Q. Did I understand you to testify before recess that on one of the occasions when Mr. Steller was stopped that he produced his union book? A. He didn't produce it, no.
809 They asked for it and I don't know. He didn't want to seem to show it. I don't know.

Q. Who didn't want to seem to show it? A. Yes.

Q. Mr. Steller? A. Yes.

Q. Do you know whether or not he had a union book at that time? A. Yes, he had a union book. I think later on he did show it.

Q. Did he say what union he belonged to? A. No.

Q. Do you know what union he belonged to at that time? A. No, I can't remember. I know he did have a book.

Q. And you testified before lunch that Bender said to him that they didn't recognize that union, is that right? A. No. Here is the way it was: He had a book and they
810 took it away. This Simpson took the book away. So he didn't bother taking the book and later he got a 445 book. That is how it worked.

Q. He did have a book? A. Yes.

Q. And then later got a 445? A. 445 book.

Q. Do you mean by that that he belonged to some other union before 445 at the time that he was stopped? A. Well, he didn't carry the other book because it was taken away. So he took out a 445 book.

Q. Do you know what other book it was, connected with what other union? A. No. It was some book down in the City here, but I don't know what book it was.

Q. Well now, you say you are now a member of Local 445 in Yonkers? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. Is it? A. Yes, sir.

Q. Is that the union to which you now belong? A. No. I belong to 282 now.

Q. Didn't you tell us before recess you belonged to 445? A. Yes.

Mr. Marks: I object to that. There was no testimony that he now belongs to it. 812

The Court: Well, he can answer it now whether he does or not.

The Witness: I do belong to 282, but I had the book because I am running over-the-road now.

Q. When did you join 282? A. In 1938, I think it was. The last of 1938. The last part of 1938.

Q. When did you join 445? A. In the summer of 1938. It must have been somewhere around there.

Q. That is, after May, 1938, is that correct? A. Yes.

Q. Now how heavy a truck do you drive? A. Registered ten ton and a half.

Q. What kind of truck was it? A. It is a Mack ten wheeler. 813

Q. Does it have a trailer also? A. No. It is one of those large jobs with the ten wheels.

Q. Where did you pick up the machinery that you carted to New York? A. Well, I didn't pick that up. A local man picked that up.

Q. By "local man" whom do you mean? A. The man that works around the state up in Connecticut.

Q. You mean outside of Shelton, Connecticut? A. Yes, in and around the state.

Q. Where particularly in the State of Connecticut did this heavy machinery come from? A. Derby—no, Ansonia, Connecticut.

Q. Before you started on your trip to New York did you go to Ansonia to pick up the machinery? A. No, sir. It is already loaded. It is already loaded the night before.

Q. You mean it is loaded on your ten-ton truck the night before at Ansonia, is that what you mean? A. Yes.

Q. It isn't loaded at Shelton where your place of business is? A. No. It is heavy machinery and they have a crane to put it on the truck.

Q. Now when you came to New York to unload it at
815 the pier did you have the use of a crane? A. No.

Q. Did you unload that heavy machinery by hand? A. Well, we always had jacks, and put rolls under her and used ties to shove it off with.

Q. No crane? A. No crane or no winch.

Q. In unloading this two and a half ton piece of machinery that you spoke of before how many men were required in getting that off the truck on to the pier? A. Well, we always took it off by ourselves.

Q. That is, you—— A. I took a piece like that many times off myself.

Q. That is, you take a two and a half ton piece of machinery off alone? A. Yes, sir.

Q. Do you know how many men they required in Ansonia to put it on the truck? A. There was a crane picked
816 it up.

Q. Do you know how many men were operating the crane? A. One.

Q. Well now, on the day that you say that this piece of machinery was broken, this two and a half ton piece, what time did you start from Shelton on that day? A. I most generally leave somewhere around four o'clock in the morning, to be in time down in the City.

Q. Four o'clock in the morning? A. Four or five o'clock in the morning. It depends on the deliveries. If it wasn't many deliveries we leave later.

Q. On the day you say Bender was working, assistin, you in removing the machinery from your ten-ton truck, what hour of the day or night did you leave Connecticut on that particular day? A. I can't remember.

Q. Can you remember the date? A. No, I can't, not without finding out about it. I would have to go and look at the receipts, when it was shipped.

Q. Do you know how many tons your truck carried from Shelton, Connecticut, on that particular day to New York? A. I think it was about half. I think it might 818
have been somewhere around half of what she should carry.

Q. Pardon me? A. About half of what she should carry. Somewhere around five and a half or six tons.

Q. How many tons does that truck ordinarily carry? A. Well, it wouldn't be full coming from Connecticut, but it would go loaded down.

The Court: What was the capacity of your truck?
The Witness: The weight it carried.
The Court: How much could it carry?
The Witness: It carried ten tons and a half.

Q. Have you ever carried more than ten tons and a half on the truck? A. We always like to be careful not to 819
have it overweight.

Q. I say, have you ever carried more than ten tons and a half on the truck? A. Not that I know of, because I never had a scale. I don't know. Unless I had added up all the weight I had, which we never do.

Q. You know there is a regulation in Connecticut as to what tonnage—— A. Yes, I don't think we were overloaded.

Q. Did you ever make any effort to ascertain whether or not you were overloaded? A. Whenever there was a little more than it would carry, we would call for another truck.

Q. Did you ever overload your weight on the truck?

Mr. Marks: I object to it as immaterial.

The Court: I sustain the objection.

Q. To get back to where you left Shelton, Connecticut, on this day of the breaking of this two and a half ton piece of machinery: You estimate you left Connecticut about four o'clock in the morning? A. It must have been
821 somewhere around there.

Q. And you got to New York about what time? A. Well, we came around somewhere around eight o'clock.

By the Court.

Q. How long does it take you to come from Shelton to New York? A. It takes about three hours and a half.

Q. Is that down to the pier? A. No. Most generally we stop at 25th Street and Tenth Avenue, and he brought us over.

Q. You brought the truck from Shelton to 25th Street? A. Yes.

Q. And when you got to 25th Street Bender took the
822 truck over? A. Yes.

Q. And went to the pier with it? A. Yes.

Q. Did you go with him? A. Yes, I went over there because the boss made arrangements with me——

The Court: Strike it out. The answer is yes.

By Mr. Murray.

Q. Would it be a fair estimate to say you reached the pier about four hours after you had left Shelton, Connecticut? A. No. It was in the morning.

Q. Now, on this particular occasion that we are speaking of, how long did it take you to unload this load on the truck? A. There isn't any more than four or five deliveries on there——

Q. Oh, no, no. Now, you spoke this morning about an occasion when a piece of machinery was broken? A. Yes.

Q. And I am addressing myself to that particular delivery and that particular day, do you understand? A. 824
Yes.

Q. You understand what I mean? A. Yes, I understand now.

Q. All right. Now, on that day how long did it take to unload your truck at the pier? A. Well, I will put it this way, that it would not have taken that long, because a piece dropped off and we spent more time at it. We had to move it on one side, and it took us longer than what it would do to drop it off.

Q. How long did it take to unload your truck on that day? A. It would not take you more than three-quarters of an hour anyway.

Q. After you unloaded your truck where did you next go? A. I never went with him then.

Q. Well, did you pick up any other loads in New York 825
to return to Connecticut? A. He picked up at R. C. Williams.

Q. To take to Connecticut? A. Yes.

Q. Do you know what was picked up at R. C. Williams? A. Groceries.

Q. Were they in cases, wooden cases? A. Most of them was in cardboard boxes; you know, corrugated boxes.

Q. Were there some cases containing cans? A. What is that?

Q. Tin cans? A. Yes, tin cans and glass and so on.

Q. Now, besides R. C. Williams on that day did you pick up any merchandise at any other point in New York?

Mr. Cahill: I object to that for the reason the witness testified he left after the truck was at the pier; and I take it when he referred to picking up in the subsequent answers he was referring to somebody else other than himself.

The Court: I think it is true.

827

Q. Do you mean after the unloading of this machinery and the truck went to R. C. Williams that—— A. Pardon me. No, at that time he was picking up at Austin, Nichols too.

By the Court.

Q. Let us get back to the pier for a moment: The truck was discharged at the pier? A. Yes.

Q. Whatever you had at the truck was taken off, is that right? A. Yes.

Q. Now, did you leave Bender and the truck at that time, or did you go along with the truck? A. I had instructions to just help him off and I never went with

828 him.

Q. So after whatever was on the truck was removed at the pier, you left? A. Yes.

Q. And then Bender went on to collect the freight that was to go back to Connecticut? A. Yes.

Q. And at what point did you pick the truck up again? A. At 25th Street and Tenth Avenue.

Q. And when you picked the truck up was it loaded? A. Yes.

Q. Was Bender there? A. Yes.

Q. And did he turn the truck over to you? A. Yes.

Q. Now, how long a time was it after you had finished discharging that truck at the pier before Bender turned the truck over to you again at R. C. Williams & Company's warehouse? A. I don't know what time—— I can't tell. It was some time during the morning we unloaded, and we had the truck loaded up most generally around 5 o'clock, half past five; somewheres around there.

Q. Then you started back to Connecticut? A. Yes.

Q. And you went back to what place? A. To Shelton, Connecticut.

Q. And did you unload the truck there? A. No. And 830
I would not work the following day, and after the next day I would start all over again; do the same thing over.

Q. And when you got back to Shelton, Connecticut, you went to the place of business of your employer with the truck and you got down off the truck and left it there? A. Yes.

Q. And somebody else unloaded the truck? A. The night man unloaded the truck.

Q. Now, do I understand that you picked this truck up at Ansonia or that afterwards—— A. No, Shelton—they load the truck the night before.

Q. And who brought it down to Shelton? A. It is only a distance of 5 miles. The man that picks it up, makes small deliveries and picks it up.

Q. You had not anything to do with the loading of it? 831
A. No.

Q. Your job was to drive the truck down to New York? A. Drive it over and back.

Q. And back to Shelton? A. To the warehouse, yes.

Q. You had not anything to do with the loading of the truck in Shelton? A. No.

Q. Or in Ansonia? A. No.

Q. Or the unloading of it in Shelton when you got back there, is that right? A. That is right.

By Mr. Murray.

Q. Now, did Bender work 5 or 6 hours on that truck loading and unloading it? A. Yes.

Q. Some of that work, unloading, was heavy work, wasn't it? A. There was some heavy and some light, as freight goes.

Q. And then at 5 o'clock in the afternoon you took your truck and you started back to Connecticut? A. It was
833 somewheres around half past five.

Q. And what time would you usually get back to Connecticut? A. It would take somewhere around 4 hours' drive. It was more going back than coming over.

Q. Would you get home about 9 or 10 o'clock at night? A. If I started at half past five I should be home half past nine.

Q. Then the next day would you get up at 3 or 4 o'clock in the morning to start out to New York? A. No, sir; every other day.

Q. Every other day?

The Court: He testified he was off the next day.

Q. Well, were you always off the day following your
834 trip to New York and your deliveries to Connecticut? A. Yes, I only had three days a week.

Q. Well, have you ever worked driving a truck that ultimately got back to Connecticut for 12 hours continuously? A. I don't get you.

Q. Well, have you worked on a truck, operating it or unloading it, or anything else, for a period of over 12 hours? A. In Connecticut?

Q. Yes. A. No.

Q. Well, between Connecticut and New York, in those trips between Connecticut and New York have you worked on your truck for 12 hours or more on occasions? A. Oh, loading and unloading, yes.

Q. Well, have you sometimes worked on your truck as high as 16 hours? A. No, sir.

Q. Now, what is the greatest length of time that you can remember that you continuously worked on your truck on any one day? A. Well, I would say somewhere around 15.

Q. 15? A. Yes.

Q. Well, you knew, didn't you, that there was a law in Connecticut prohibiting you from operating a truck be- 836
yond 12 hours?

Mr. Marks: I object to that as immaterial.
The Court: Sustained.
Mr. Murray: I respectfully except.

Q. Do you know whether or not your employer carried compensation insurance?

Mr. Marks: Same objection.
The Court: Sustained.
Mr. Murray: Exception.

Q. Now, when you joined this Local 282 where was its headquarters? 837

Mr. Marks: Same objection. Irrelevant and immaterial.
The Court: Overruled.

Q. Where was the headquarters of Local 282, the union you joined? A. 14th Street and Eighth Avenue.

Q. Have you ever been in the union rooms? A. Yes, sir.

Q. When were you last there? A. I can't remember. I paid up my book now. I don't belong to it anymore.

Q. You don't belong to it? A. No.

Q. And you don't belong to 445? A. No, sir.

Q. Well, is it a fact that shortly after these men were indicted in this case that you gave up your union book?

Mr. Marks: I object to it as assuming a point not in evidence.

The Court: Sustained.

Mr. Murray: Exception.

839 *By the Court.*

Q. Do you know when the defendants in this case were indicted? A. No, sir.

Q. Well, did you give up your book after the 30th of May, 1938? A. It was in 1939 I gave it up.

By Mr. Murray.

Q. And when did you quit the union or when did you discontinue being a member of the union? A. I don't know; somewhere around September, I think.

Q. Of 1939, was it? A. Yes.

Q. Or 1938? A. 1939.

840 *By the Court.*

Q. It was last September? A. Yes.

Q. Last year? A. Yes, last year, in September.

By Mr. Murray.

Q. Now, just one other question about the union: 445 you joined in 1938? A. Yes.

Q. Did you pay your dues or did your employer?

Mr. Marks: I object to that as immaterial.
The Court: Sustained.
Mr. Murray: Exception.

A. I paid my dues.

The Court: Strike out the answer.

Q. Was there a scale of wages fixed according to the rules of that union that you were to receive for your services as a chauffeur? 842

Mr. Cahill: Just don't answer. I object to that as immaterial.
The Court: Sustained.
Mr. Murray: Exception.
If your Honor please, I would like to be heard on it with respect to the point I am trying to make, to clarify the record, and on account of certain averments in this indictment.
The Court: No.
Mr. Murray: I respectfully except. That is all.
(Witness excused.)
Mr. Marks: Mr. Monar.

843

HENRY MONAR, residing at Meadow Street, Milford, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Now, Mr. Monar, will you please keep your voice up so we can all hear you? A. Yes.

Q. Are you employed now? A. Not right at present, no.

Q. Where were you employed in 1937 and up to May 31, 1938? A. For Steller.

Q. Steller Trucking Company? A. Yes.

Q. In Shelton, Connecticut? A. Yes.

Q. When did you go to work for Steller? A. I do not know the date on that.

Q. Well, can you tell us approximately what year?

By the Court.

Q. When did you leave Steller's employ? A. I left them in 1937.

845

Q. How long had you been working for him when you left him? A. I worked for him about a year.

Q. What part of 1937 did you leave him? A. In July, I think it was; the end of July.

Q. 1937? A. Yes.

Q. That would be three years ago next July? A. Yes.

By Mr. Marks.

Q. Did you drive a truck into New York City for Steller? A. I did.

Q. When did you begin driving over the road to New York? A. Off and on, I have been coming down—I think it was in 1936 when I started coming down; 1936.

846

Q. And did you drive your truck into New York regularly? A. No, not regularly; probably once a week or once a month or so.

Q. Well, was there a time when you began to drive regularly into New York City? A. Yes, when I worked for Steller.

Q. When was that time when you began to drive regularly into the City? A. I think it started in 1936, around July or August.

Q. And it continued up to when? A. 1937.

Q. Do you remember what part of the year? A. Until July, 1937.

Q. Were you able to unload your truck yourself in New York City?

Mr. Murray: I object to the question, was he able to.

The Court: Sustained.

Q. Did you unload your truck yourself in New York City? A. Sometimes.

Q. During what part of the period that you drove your truck to New York City did you unload yourself? A. The first part of 1937. That is about in January, February, around there. 848

Q. And approximately when did you stop unloading your truck yourself? A. Well, I did not stop unloading myself. I had to join a union.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Did there come a time when your truck was stopped in New York City? A. Yes.

Q. When was that? A. I could not tell you the date.

The Court: Well, when did you join the union?

The Witness: I don't know when it was—I was in it only about a month, I think. It was the first part of June, I guess, or the end of it, 1937, that I got in. 849

Q. What union did you join? A. 445.

Q. In Yonkers? A. Yes.

Q. Was it at that time that your truck was stopped in New York City? A. Yes.

Q. Who stopped your truck? A. What do you mean who stopped it?

Q. Who? A. Who were the fellows?

Q. Yes. A. Bob Dillon, Siciliano; that is about all I know.

Q. Now, Mr. Monar, will you stand up and step down from the witness stand and look around this courtroom and pick out any persons who stopped your truck in that period. You can step down if you want to. Take your time. A. (Witness steps down from stand.)

Q. If you want to walk over there you may do so. A. I don't recognize any here. No.

851 The Court: Do you see Siciliano in court or do you see Dillon in court?

The Witness: I don't see him.

Q. All right. Will you take the stand again? A. Yes (returning to stand).

Mr. Marks: May I have this photograph marked for identification?

(Marked Government's Exhibit 2 for identification.)

Q. Now, I show you Government's Exhibit 2 for identification and ask you if that refreshes your recollection as to

852 the——

Mr. Murray: I object, if your Honor please, on the ground that it is improper.

Q. (Continuing) —as to the identity of any of the persons who stopped your truck?

The Court: I will sustain the objection. You may show him Government's Exhibit 2 for identification and ask him if it indicates anyone he knows.

Q. I show you Government's Exhibit 2 for identification and ask you if that indicates anybody you know? A. I think he is right over there——

The Court: Now, wait a minute. You are not asked that. You were asked if that indicates to you anyone you know.

The Witness: I know him as Bob Dillon, that fellow there (indicating).

Q. Now, is he in this courtroom? A. Yes; I just noticed him now.

Q. Will you go down and point him out, please. A. Over there (indicating). 854

The Court: I cannot tell which man you indicate.

The Witness: Right in there (indicating).

The Court: Last row or the other row?

The Witness: Last row.

The Court: All right. The clerk will call the name Robert Dillon.

The Clerk: Robert Dillon.

(A man stood up.)

The Court: Is that the man you pointed to?

The Witness: Yes.

The Court: All right.

(Witness returned to the stand.)

The Court: When you left the stand before did you see him? 855

The Witness: No.

Q. How often did Dillon stop your truck? A. I couldn't tell you. I would not remember that. Quite a number of times.

Q. And where? A. He used to stop me down at Tenth Avenue there and 26th Street.

856 *Henry Monar—For Government—Direct.*

Q. Is that R. C. Williams? A. Yes.

Q. Any other place? A. No, not any other place that he stopped me.

Q. Now, was Dillon alone when he stopped your truck? A. No.

Q. How many men did he have with him? A. He generally had three, four besides him.

Q. Were you alone as a rule? A. Yes.

Q. What did Dillon say to you when he stopped your truck on these occasions? A. He warned me that I was not able to come down and deliver the load or pick up down the City without a City man.

857 Q. Did he tell you who he was? A. Yes. He represented himself as a delegate.

Mr. Boudin: I move to strike that out.

The Court: Well, what did he say?

The Witness: He said he was a delegate of 807 union or something.

Mr. Boudin: If your Honor please, I move to strike that out on the ground that you cannot prove agency by the agent or the declarations of the agent.

The Court: That is true, but they can also prove that this man said he was an agent. He might not have been an agent at all; he may have been misrepresenting he was an agent. It is only binding on Dillon. Motion denied.

858 Mr. Boudin: Exception.

Q. Did he tell you what his duties were? A. No; I never got into talking with him that far.

Q. What conversation did you have with him about the truck? A. I don't understand what you quite mean by that.

Q. Well, when he stopped your truck what did he say and what did you say? A. He told me I could not deliver without putting a City man on.

Q. And what did you say? A. Well, I had an argument there; I told him that it was my first time down——

Q. Tell us what you said. A. I told him it was my first trip, or something like that; that I didn't know you had to have a City man.

Q. And what did he say? A. Oh, we argued and argued there.

Q. No; tell us what was said, please. A. Well, he just told me I could not get along without a City man. That is about the only thing he ever told me.

Q. And did he tell you why? A. He claimed that we worked too many hours.

Q. Did you tell him how many hours you did work? A. 860
No.

Q. Is that all he said? A. That is all he told me.

Mr. Marks: May I have this marked for identification?

The Court: Yes. Exhibit 3.

(Marked Government's Exhibit 3 for Identification.)

Q. Now, will you look at Government's Exhibit 3 for identification and see whether that refreshes your memory? Do you remember what else, if anything, Dillon said to you when he stopped your truck? A. Oh, he threatened there would be some damage done to the truck.

861

The Court: What did he say?

The Witness: What did he say? It would be just too bad for me, he says, if I delivered the load, that is all. Don't know what he meant by that.

Q. Did you ask him what he meant? A. No.

Q. He just said it would be too bad for you? A. Yes.

862 *Henry Monar—For Government—Direct.*

Q. Did you ever deliver a load after that alone? A. I did.

Q. Was Dillon present? A. No, I never managed to run into him after that.

Q. Did he say anything to you about sneaking into the City? A. No.

Q. Did you ever pay Dillon any money? A. No.

Q. When he stopped you did you ever call your employer on the telephone? A. I did.

Q. Now, were you ever stopped by anybody else other than Dillon? A. The Siciliano boys.

Q. And was that in 1937? A. Yes.

863 Q. Where did they stop you?

Mr. Murray: I object to it, if your Honor please, on the ground that it is unconnected with the issues.

The Court: What time of the year?

Q. What part of 1937? A. That they stopped me?

Q. Yes. A. The spring part of it.

Q. And where in the City? Right around R. C. Williams. That is where I always got picked up by them.

Q. Beg pardon? A. In 1937. That is when I used to get picked up, around R. C. Williams.

By the Court.

864 Q. Was that before or after this incident which you have testified to with respect to Dillon? A. I don't quite understand you, your Honor.

Q. Were you stopped by the Siciliano brothers before or after? A. They was with him all the while when I was stopped.

Q. They were with Dillon? A. Yes.

Q. Well, were you stopped by the Siciliano brothers at any time when Dillon was not present? A. I have, later on.

Q. That is what I asked you. Was this time when you were stopped by the Siciliano brothers after the time when you had this conversation with Dillon? A. I have been stopped by the Sicilianos in 1938.

Q. Well, were you stopped by them any time in 1937? A. By Siciliano?

Q. Yes. A. Yes, while they were in the presence with Dillon.

Q. But at the time when Siciliano stopped you and Dillon was not present—that was in 1938? A. Yes.

Q. Not in 1937? A. That is right.

By Mr. Marks. 866

Q. When in 1938? A. When they stopped me in 1938?

Q. Yes, what part of 1938? A. The fall part of it.

Q. The fall of the year? A. Yes.

Mr. Boudin: If your Honor please, I move to strike that part of the testimony out on the ground that it is not connected with the issues in this case.

Mr. Marks: What part?

The Court: Strike it out.

Mr. Marks: Which part is that, your Honor?

The Court: The fall of 1938.

By the Court. 867

Q. I understood you to testify that you stopped riding for this employer? A. Steller, you mean?

Q. Yes; in July of 1938. A. Yes.

Mr. Boudin: 1937.

Q. 1937, was it? A. Yes.

Q. Whom were you driving for in 1938? A. Deptula Trucking Company.

By Mr. Marks.

Q. When did you go to work for Deptula? A. I think it was August, I am not quite sure.

By the Court.

Q. Well, when you left the employ of Steller, did you go to work for Deptula? A. No, not right then. I worked somewheres else.

Q. How long was it before you went to work for Deptula? A. About eight months, I guess, after.

869 *By Mr. Marks.*

Q. Back in 1937 when the Sicilianos stopped you, what did they say?

Mr. Boudin: If your Honor please, I do not think there was any such evidence, unless he referred to the time when Dillon was there.

Mr. Marks: I believe he said, your Honor, in 1937 at the same time that Dillon stopped him the Sicilianos were present.

The Court: Wait. If there is any question as to what the testimony is, the jury will depend upon their own recollection and not the recollection of anybody else. He testified that he was stopped by
870 the Siciliano brothers in the spring of 1937 and that Dillon was present.

Now, what was the question?

(Question read.)

The Court: You may answer.

A. Well, they just warned me that I should not come down to New York.

By the Court.

Q. What were their words? Tell us as nearly as you can what they said. A. That I was not able to come down to New York and deliver the loads; that is all the argument always was.

Q. On that particular occasion did Dillon say anything, or was the talking done by the Siciliano brothers? A. The Siciliano brothers done a lot of talking.

Q. Did Dillon do any talking on that occasion? A. I could not remember about that.

Q. Which one of the Siciliano brothers was it that did the talking? A. Ralph, I think it was. 872

By Mr. Marks.

Q. What did you tell them when they said you could not come down to New York and unload? A. I told them to get in touch with my boss there if I could not come down and unload. I was told to deliver my load; that is all I used to tell him in the argument with him.

Q. Did they tell you you could get in touch with your boss? A. No, they never said a word.

Q. Now, in 1937 were you ever stopped on the Boston Post Road? A. No, sir, not that I know.

Q. Or up to May 1, 1938? A. In 1938 I have been stopped.

Q. On the Boston Post Road? A. Yes. 873

Q. What part of 1938? A. Oh, the spring part—no, it was the fall part of 1938.

By the Court.

Q. Whom were you driving for then? A. In 1938?

Q. When you were stopped? A. Deptula Trucking Company.

874 *Henry Monar—For Government—Cross.*

Mr. Boudin: I again move to strike it out. The witness said it was the fall part of 1938.

The Court: What are you moving to strike out?

Mr. Boudin: The motion is to strike out this incident. The witness said it was the fall of 1938. He repeated that just now.

The Court: Motion denied.

Mr. Boudin: Exception.

The Court: Of course, the jury understands that anything that happened in the fall of 1938 is not in this case.

Mr. Marks: That is all.

875 *Cross examination by Mr. Murray.*

Q. Were you a member of the union when you were stopped in 1937? A. In 1937 you say?

Q. Yes. A. Yes.

Q. When did you become a member of the union? A. I think it was June, 1937.

Q. When were you stopped? A. I don't quite get your point when I was stopped.

Q. You testified that some time during 1937 that you were stopped by the Sicilianos and Dillon. Do you remember that? A. Yes.

Q. Do you remember what part of 1937 that it was that they stopped you? A. In the spring part of 1937.

876 Q. You became a member of the union in June of 1937? A. That is right.

Q. So that the time you were stopped you were not a member of the union, were you? A. (Witness nods.)

The Court: Don't shake your head. The stenographer can't write that.

The Witness: Yes.

Q. What union did you join in June, 1937? A. Yonkers Union, 445.

Q. You live in Newport, Connecticut, do you? A. Not at that time.

Q. You do now? A. Yes.

Q. Did you live in Shelton, Connecticut, in 1937? A. I did.

Q. Is there a local union in Waterbury? A. I could not tell you. I never looked for any.

Q. Is there one in New Haven?

Mr. Marks: I object to that as immaterial.

The Court: Sustained.

Mr. Murray: Exception. 878

Q. You were not a resident of Yonkers, were you, in 1937 in the month of June?

Mr. Marks: Objected to as immaterial.

The Court: I will allow it.

The Witness: What was that question?

Q. You were not a resident of Yonkers——

The Court: When you joined the Yonkers union did you live in Yonkers?

The Witness: I lived down here in the City, in New York.

The Court: Where? 879

The Witness: 179 East 101st Street.

Q. You were living here continuously during the year 1937, were you? A. No, I was only here a couple of months.

Q. What months were you here? A. June and July I think it was. That is about all, because I guess I left the—at the end of July I left Steller.

Q. On this occasion in the spring of 1937 when you say Dillon with others stopped you, did they ask you to join the union? A. No.

Q. Did they say anything to you about Local 807? A. I don't quite understand that.

Q. Did they say anything to you about they being members of Local 807? A. Yes. They told me they were members of 807 and they did not recognize a 445 book.

Q. You were not a member of 445 at that time, were you? A. I don't understand what you mean now.

Q. All right. You say that you were stopped some time in the spring, around April of 1937 by Dillon and others; is that clear? A. Yes.

881 Q. Did you join the union 445 in Yonkers in June of 1937? Is that correct? A. That is right.

Q. On this stopping you in the spring of 1937, around April, you were not then a member of the union, were you? A. No.

Q. And you didn't have any discussion, did you, with Dillon or anyone else concerning Local 445 before you joined the union? A. No, I had not.

Q. And at that time is it correct that they did not tell that they did not recognize Local 445? A. No, they didn't then.

Q. So you had no talk about 445 then? A. No.

Q. Did you know that Local 807 was a union that had members who did the same kind of work as Local 445 of

882 Yonkers?

Mr. Marks: I object to that as immaterial.

The Court: I will allow it.

A. I did not.

Q. Well, was that a teamsters' and truckmen's union in Yonkers, Local 445? A. Yes.

Q. Did you start on your deliveries from Shelton, Connecticut, when you drove a truck? A. When I drove a truck?

Q. Yes. A. I started in New York.

Q. Well, were you driving for the Stellers in 1937? A. Yes, but we started deliveries in New York. The New York truck used to start in New York.

Q. All right. Did you ever operate from Shelton, Connecticut? A. I have.

Q. Into New York? A. Yes.

Q. In the spring of 1937 were you driving from Shelton, Connecticut, to New York, or were you only driving in New York? A. No. While I was driving in New York, I 884
have some of the time come down from Shelton and drove down.

Q. Well, were you driving from Shelton, Connecticut, to New York, say, before June 1, 1937? A. I was.

Q. How many ton-truck did you drive? A. Ten-ton truck.

Q. What kind of merchandise did you truck?

Mr. Marks: Objected to as immaterial.

The Court: I will allow it.

A. Oh, we had baskets on, freight, groceries there.

Q. Did you carry machinery? A. Yes.

Q. Where did you get that machinery? A. That was picked up by the local man up there in Shelton. 885

Q. Was it heavy machinery? A. Some of it was.

Q. Some of it weighing more than a ton? A. Yes.

Q. How many tons would you say at the most that any of it weighed?

The Court: You mean the total or a single piece?

Mr. Murray: No, one single piece, if your Honor please.

A. One piece, I have seen it there when we unloaded three tons, three and a half tons.

Q. When you carried machinery that weighed three or three and a half tons, were you alone on your truck? A. Yes, sir.

Q. Where did you deliver that machinery? A. At a pier.

Q. Do you remember the number of any pier that you made such deliveries? A. Pier 4 down the East River.

Q. Didn't you require assistance in taking, say, a piece of machinery that weighed three and a half tons off your truck? A. No.

Q. Did you do it all alone? A. Yes, sir.

887 Q. When you met Dillon, as you say, at R. C. Williams was there a man in charge of the platform at R. C. Williams who received the consignment of merchandise which you brought in on your truck? Was there what is called a platform man? A. Well, I wouldn't know about that. I used to have to push the stuff inside the building there and then get signed out.

Q. Did you take the stuff or the merchandise off your truck and bring it inside the building yourself? A. I brought it in there, yes, sir.

Q. Of the R. C. Williams building? A. Yes, sir.

Q. Isn't it a fact that all you did was back up your truck to the platform of R. C. Williams and then there were three men on the platform that took the merchandise off your truck? Isn't that how it worked? A. Well, I never
888 seen it that way. I have always had to put it on the platform and wheel it inside when I was working for them.

Q. You mean wheel it from the platform of R. C. Williams inside to the warehouse? A. Yes, sir.

Q. You did that in 1937? A. I did.

Q. Are you certain about that? A. Pretty sure of it.

Q. Well, did anyone on the platform of R. C. Williams tell you in the spring of 1937 that you were to have a helper?

Mr. Cahill: Objected to as immaterial.
The Court: Sustained.
Mr. Murray: May I finish the question, if your Honor please?
The Court: Certainly.

Q. Did anyone tell you on the platform of R. C. Williams in 1937 that you required a helper to assist you in unloading your truck?

Mr. Cahill: I press my objection.
The Court: Sustained.
Mr. Maguire: Exception.
Mr. Boudin: Exception. 890

Cross examination by Mr. Maguire.

Q. Mr. Monar, have you your union book? A. No, I haven't.

Q. If I understand you correctly, you say you were a member of the union for approximately a month? A. A month? Yes, that is what it was and I left the job then.

Q. This man Steller who testified here today: He is a nephew of Steller, the owner of this company, is he not? A. Yes.

Q. And at the time that you went or you joined 445 did any other driver of the Steller Company join 445?

891

Mr. Marks: Objected to as immaterial.
The Court: Sustained.
Mr. Maguire: Exception.
Mr. Boudin: Exception.

Q. When you joined the union, 445, do you know whether or not your employer Mr. Steller entered into a contract with Local 445 covering wages, hours and conditions?

892 *Henry Monar—For Government—Cross.*

Mr. Marks: Same objection.

The Court: I will allow him to say whether he knows or not.

A. No, I don't.

Q. Were the wages, hours and conditions that you worked under prior to the time that you joined Local 445 the same as they were after you joined it?

Mr. Marks: Same objection.

The Court: I will allow him to answer that yes or no.

893 A. I don't quite understand you.

Q. Well, say that on July 1 you joined Local 445 in Yonkers. In the week preceding your joining the union you were being paid certain wages, you were working certain hours, you were working under certain conditions?

Mr. Cahill: If your Honor please, excuse me——

The Court: For what purpose do you rise, Mr. District Attorney?

Mr. Cahill: To press the objection, your Honor. We are not here trying Local 445, and if we go into it, I shall be compelled on redirect to go into that issue.

The Court: I think the question so far as I have heard it is rather argumentative. I take it what

894 you are trying to find out is whether after he became a member of Local 445 the conditions under which he worked changed.

Mr. Maguire: That is right.

The Court: Well, all right. You can ask him that question.

Mr. Maguire: I did before, I thought, and he said he didn't understand it.

Q. Now do you understand the question?

By the Court.

Q. You were working for Steller before you joined 445? A. Yes.

Q. Then you joined 445? A. Yes.

Q. Now when you joined 445 did the working conditions change?

Mr. Cahill: May I be heard on that, your Honor?

The Court: I will take the responsibility for the question myself. After all, it is my duty to see that a fair trial is had here, and I will try to 896 shorten this if I can.

Q. Did the working conditions change, and the answer to that is yes or no. Were your hours or your wages any different after you joined 445 than they were before? A. No.

The Court: Well, that settles that. Now let us go to the next question.

By Mr. Maguire.

Q. Now you say you were working for a while for Steller as a City driver, a driver in New York City, is that correct? A. Yes.

Q. For how long were you working in the City of New 897 York for Steller as a City driver? A. I think it must have been a month or so. I wouldn't be sure about that.

Q. Was that early in 1937? A. That is right.

Q. Your work there was to receive the trucks as they came in? A. Yes.

Q. Drive the trucks and distribute the loads? A. Yes.

Q. And I suppose similarly you made pickups? A. Yes.

Q. And loaded the trucks and then turned the trucks back to the over-the-road driver who went to Shelton? A. Yes.

Mr. Maguire: That is all.

Redirect examination by Mr. Marks.

Q. Now, Mr. Monar, when you were driving this truck in 1937 and in 1938 you didn't have a broken leg, did you, as you have now? A. No.

Q. You say you were first stopped in April of 1937, is that right? A. I believe it is right.

899 Q. Around that time? A. Yes.

Q. In June of 1937 you said you joined Local 445? A. Yes.

Q. Were you stopped in June, 1937, by members of Local 807? A. I was.

Mr. Maguire: Now I object to that and ask that the answer be stricken out. It is not proper redirect, I submit. Further, there is no identification of members of 807.

The Court: I think that objection is well taken.

Mr. Marks: On which ground, your Honor?

The Court: On the ground that it is not proper redirect examination and also upon the ground that you asked him whether he was stopped by

900 members of Local 807.

Mr. Marks: Well, I will re-phrase that.

The Court: He hasn't identified the persons. That is a pure conclusion on his part as to whether they were members of any organization. I will strike out the answer.

Mr. Marks: With respect to that part of the question I will re-phrase it.

The Court: You will have to re-phrase it because it has been ruled out.

Mr Marks: Of course, your Honor, but as to the improper redirect, that objection still remains. I would like to be heard on that.

The Court: Put your question. I can't rule on anything unless there is a question before me.

Q. Were you stopped by Dillon and the Sicilianos in June, 1937?

Mr. Maguire: I object to that as improper redirect examination.

The Court: I will sustain the objection on the ground that it is already answered. 902

Mr. Marks: May I be heard?

The Court: Excuse me. Dillon? No; I will overrule the objection. There has been no inquiry as to Dillon after the spring of 1937 in connection with the Sicilianos, as I remember.

You may answer yes or no.

A. I was stopped after that.

Q. That is in June? A. Yes.

Q. And it was in June that you joined Local 445? A. Yes.

Q. Now in June of 1937 did you have any conversation with Dillon about the fact that you were a member of Local 445? 903

Mr. Boudin: Objected to.

The Court: I will allow it.

Mr. Boudin: Exception.

A. I did.

Q. Will you tell us what that conversation was?

Mr. Boudin: Same objection.

By the Court.

Q. Where did the conversation take place? A. Around R. C. Williams there. I wouldn't know the exact street.

Q. Well, who were present? A. Siciliano and Bob Dillon.

Q. Which one of the Sicilianos? A. Ralph.

Q. Anybody else? A. I don't know the other names.

Q. Now when was it with respect to the time when you received your card as a member of 445? A. I don't understand, your Honor, what you mean.

Q. Was it after you became a member of 445? A. That I was stopped?

905

Q. Yes, and had this conversation. A. Yes.

Q. That you were going to tell us about? A. Yes.

Q. How long had you been a member? A. I don't know. A couple of days, I think.

The Court: All right. What is the next question?

By Mr Marks.

Q. Will you tell us what the conversation was?

Mr. Boudin: I object to it.

The Court: Overruled.

Mr. Boudin: Exception.

906

Q. Do you understand the question? A. You want me to answer what was said?

Q. Yes. Tell us what was said between you and Dillon and the Sicilianos at R. C. Williams with respect to the fact that you were a member of Local 445. A. When I got into Local 445 Bob Dillon and the three Sicilianos claimed that wasn't any good because 807 took care of over-the-road drivers and all that.

The Court: Is that what they said?

The Witness: Yes, sir. I was supposed to get in 807 if I wanted to be on City——

Q. Is that what they said? A. Yes.

Q. Did you try to get into 807? A. No, I didn't.

Mr. Maguire: I object.

Mr. Boudin: I object.

The Court: Overruled.

Mr. Boudin: It calls for a conclusion.

The Court: He said no. You may take an exception if you wish it.

The Boudin: We didn't hear it, if your Honor please. 908

The Court: Well, I heard it.

Q. Did they say anything to you about 807 recognizing 445?

Mr. Boudin: That is objected to as calling for a conclusion.

(Question read.)

The Court: Sustained.

Q. Have you told us the full conversation between you and Dillon and the Sicilianos with respect to Local 445? A. Have I told you the full conversation?

Q. Yes. Was there anything else that was said that 909 you haven't told us about? A. No, not that I know of.

The Court: Have you told us all you remember?

The Witness: Yes, sir.

Q. Did they say anything about Local 807 recognizing Local 445?

Mr. Boudin: That I object to as calling for a conclusion.

The Court: Sustained.

Q. Up to when did Dillon and the Sicilianos stop your trucks? A. Of 1937 you mean?

Q. Did they do it all through 1937?

The Court: Now wait a minute. "All through" might mean anything. If you want to find out how many times they stopped the trucks that is another matter. If you asked him if they stopped the trucks all through the year and he said yes, what
911 is the jury going to infer from that? That it happened every day?

Mr. Marks: I will follow it with another question, your Honor.

The Court: We don't do it that way. I will exclude that question on my own motion, although not objected to. Proceed.

Q. How many times did Dillon and the Sicilianos stop your truck in New York City?

Mr. Maguire: I object unless the time is specified.

The Court: Overruled.

Mr. Maguire: Exception.

912 The Court: We have got to get the facts first before the time can be specified.

What is the answer?

The Witness: I wouldn't remember how many times I was stopped on that.

Q. Well, can you tell us how many times a week after April, 1937?

The Court: Well, how many times a week did you drive down to the City after April, 1937, up to June?

The Witness: Three times a week.

The Court: Then you couldn't have been stopped more than three times, could you?

The Witness: No.

Q. Well, how many times a week did they stop you? A. Well, there were times you would see them and times you wouldn't see them at all. Sometimes you wouldn't see them for a couple of weeks, and then times you would run into them pretty near every time you came down. 914

By the Court.

Q. Well, how many trips did you make to the City from the middle of April until you became a member of 445? A. Three trips.

Q. How many times on those three trips were you stopped by anybody? A. I wouldn't remember that.

By Mr. Marks.

Q. Now tell us exactly what happened when they stopped you.

The Court: Well, stopped him when? 915

Mr. Maguire: I object to it as repetitious.

The Court: When are you talking about?

Mr. Marks: Beginning in April, 1937.

The Court: He just said he wouldn't remember what happened from April, 1937 down to the time that he got his union card.

Q. Well, tell us what happened when they stopped you beginning in June, 1937.

The Court: Hasn't he told us that?

Mr. Marks: I would like to ask him, your Honor, the way in which he was stopped.

The Court: What happened when you were stopped in June, 1937?

The Witness: I wouldn't remember that.

Q. Well, did they stop your truck while it was on the road? A. No. They stopped me while I was backing up.

Q. Where? A. R. C. Williams.

Q. Would you back your truck in? A. Sometimes I was backed in; sometimes I wasn't.

917 Q. After you backed in did you start unloading or picking up a load? A. Yes, sir, I did.

Q. And when would they first approach you? A. Sometimes you would just start on a load and they would approach you.

Q. Did they ever approach you after you had completed a good part of the load yourself? A. Yes.

Q. And tell you then you had to put on a City man? A. Yes.

Q. Even though you had done most of the loading already? A. Yes.

Mr. Murray: I object to this as leading and suggestive.

The Court: Well, I have observed myself that
918 Mr. Marks is testifying and the witness is just saying yes.

(Short recess.)

(Witness excused.)

THEODORE STELLER, residing in Shelton, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

(The clerk called the roll of defendants and all were present.)

Direct examination by Mr. Marks.

Q. Mr. Steller, what business are you in? A. Transportation.

Q. Will you please keep your voice up so we can all hear you. A. Transportation.

Q. What is the name of your company? A. The same 920
as mine, Theodore Steller.

Q. Are you the owner? A. That is right.

Q. How long have you been in business? A. Since 1926.

Q. Now in 1937 how many trucks did you operate? A. Nine.

Q. Between what points did you operate? A. Primarily New York City.

Q. That is Connecticut to New York City and return? A. Yes, sir.

Q. What type of merchandise did you haul? A. Commodities in general.

Q. In general? A. That is right.

Q. In 1937 did your over-the-road drivers unload trucks in New York themselves? A. Yes, sir. 921

Q. Did there come a time when they stopped unloading trucks themselves? A. Only when they were stopped.

Q. When were they first stopped? A. In 1937, in the spring of the year.

Q. I beg your pardon? A. In the spring of the year.

The Court: Speak a little louder, Mr. Steller.

922 *Theodore Steller—For Government—Direct.*

Q. In the spring of 1937? A. Right.

Q. How often were they stopped beginning with the spring of 1937?

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Q. How did you learn that your trucks were stopped in New York?

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

923 Q. Did you receive telephone calls from New York City beginning in the spring of 1937 as to the stopping of trucks in New York? A. Yes.

Q. From whom?

Mr. Murray: I object.

The Court: I will allow it. He may state from whom.

Q. From whom? A. From different drivers who were stopping the men.

Q. Your employees?

The Court: "From different drivers." Strike out after "drivers".

924

Q. When you say "drivers" you mean your own drivers? A. No.

Q. You mean City men in New York City? A. That is right.

Q. Who are "some"——

The Court: You mean drivers not employed by you, is that it?

The Witness: That is right.

The Court: Persons not employed by you?

The Witness: Yes.

Q. Who are some of the men who called you?

Mr. Murray: I object to it on the ground that there has been no foundation laid.

The Court: Sustained.

By the Court.

Q. Do you know who these persons were who called you on the telephone? A. Some of them I knew. 926

Q. Do you know them personally? A. Not before they called, no.

Q. So you didn't recognize the voice of the person who was on the other end of the telephone? A. No.

By Mr. Marks.

Q. Did you meet any of those people later? A. Yes, sir.

Q. And when you met them later did you recognize their voices? A. Some of them.

The Court: When you met them later did you have a conversation with them?

The Witness: Yes.

927

The Court: During that conversation did you recognize the voice of anyone of them as a voice that you had previously heard?

The Witness: No, I couldn't say that.

Mr. Marks: That is, heard on the telephone.

The Court: Well, never mind. That wasn't my question.

928 *Theodore Steller—For Government—Direct.*

Q. When you later met some of these men did you have a conversation with them face to face about prior telephone conversations? A. Yes.

Q. Who were some of the men you met later? A. Victor Weaver.

The Court: Give us the names of any others.

The Witness: William Wiederman.

Q. Any others? A. Broderick. I don't know his first name.

Q. Any others? A. Williams.

929 The Court: Any others?

The Witness: Bender.

Q. Joseph Bender? A. Joseph Bender.

Q. When you met any of these men did you have——

The Court: Let us find out if any of these men are here and if he recognizes any of them here as the persons whom he has named.

Mr. Marks: May he step down?

The Court: He may.

Q. You can step down from the stand and look around. A. (Witness steps down from the witness stand.)

930 The Court: You can walk around the table if you want to unless your eyesight permits you to see across the room.

The Witness: There is one (indicating).

The Court: Well, indicate who he is.

The Witness: Mr. Bender (indicating).

The Court: He is the only one you see here?

Mr. Marks: Shall he point him out, your Honor?

The Court: Oh, I think it can be understood who Mr. Bender is.

Mr. Marks: And the record may indicate that the witness has identified the defendant Joseph Bender?

The Court: Yes.

Q. Now when did you first meet Bender? A. About November of 1937.

Q. And when you met him did you have any conversation with him about prior telephone conversations? A. Not with him, I don't think.

Q. Did you recognize his voice as a voice you had heard before? A. No, I don't think so.

Q. When you met some of these other men later, whom you don't see in court, did you recognize any of their voices? 932

Mr. Boudin: I object to it as immaterial.

The Court: I will allow him to say whether he recognized them or not.

Q. As voices you had heard before over the telephone? A. Yes.

Q. Which ones? A. Wiederman, in particular, and Victor Weaver.

Q. When did you first have a telephone conversation with Wiederman? A. In June, 1937.

Q. June of 1937? A. Yes.

Q. Will you tell us what was said by you and by him? 933

Mr. Maguire: I object to it.

The Court: Sustained.

Q. After you had that conversation with Wiederman did you send any money to New York? A. No, sir.

Mr. Boudin: Objected to as immaterial.

The Court: He said no, sir. I don't suppose the objection is pressed?

Mr. Boudin: No, except that we can't hear very well at this end.

Q. How many telephone conversations did you have in 1937? A. A dozen.

Q. A dozen altogether? A. Yes.

Q. And after any such conversation did you send money to New York City? A. No, sir.

Q. Where did you meet Joseph Bender? A. At R. C. Williams.

Q. And you say it was in November of 1937? A. About that.

935 Q. Who else was present? A. My man Haversat.

Q. Will you tell us what the conversation was? A. It was the day that I discharged him.

Q. Discharged whom? A. Joe Bender.

Q. What did you say to him and what did he say to you? A. I told him I didn't need his services any longer.

Q. Will you please talk a little louder? A. I didn't want him to work for me any longer.

Q. What did he say? A. He said he was my No. 1 man and I couldn't fire him.

Q. Couldn't what? A. Couldn't fire him, discharge him.

Q. Did you have a contract with Local 807 at that time? A. No, sir.

Q. Have you ever had a contract with Local 807? A. Yes.

936 Q. How long ago? A. About seven years.

Q. But not in 1937? A. No, sir.

Q. Will you continue with your conversation with Bender. A. I told him he was discharged just the same and I wouldn't allow him to work on the truck any longer.

Q. Did you tell him why you were discharging him? A. Because he done so much damage to the merchandise.

Q. Did you tell him what damage he had done? A. Yes.

Q. Tell us the whole conversation. A. And he said——

Q. Tell us what you said to him about the damage he had done. A. I told him there was too much merchandise being broken every day, and the trucks were not being handled properly, damage was being done to them.

Q. What type merchandise? A. Glass goods and food commodities in particular, and large machine parts.

Mr. Maguire: I can't hear what the witness said.

(Answer read.)

Q. What did he say? A. He said that I couldn't discharge him because he was the City man for me and he would have to continue to work. 938

Q. Go on. A. So I told him that he was discharged and I didn't want to have him bothering my men any more and he said I wouldn't take any freight out of that place where we were, R. C. Williams, unless——

Q. Unless what? A. Unless I did put him on, and I told him I would be there myself the next day to see that the truck was loaded. He said that wouldn't make any difference, that I would be stopped anyway. I told him if he bothered me I was going over to see the District Attorney, Dewey. He said if I did it wouldn't do any good, he wouldn't pay any attention to me. I said, "Well, if he don't, I am going on to Washington and find out why I can't be left alone," and he said they would pay no attention to me in Washington either. So I told him that I was 939 going to continue.

Q. Did you tell him whom you were going to see in Washington? A. The Department of Justice, I told him I would go to, but I didn't know anyone in particular.

Q. And he didn't bother you after that? A. No.

Mr. Marks: That is all.

940 *Theodore Steller—For Government—Cross.*

Cross-examination by Mr. Maguire.

Q. Mr. Steller, you say that approximately seven years ago you had a contract with Local 807? A. That is right.

Q. Was that the usual two-year contract? A. I think it was.

Q. Was the contract in effect simply for the two years or was it renewed? A. It was not renewed, no.

Q. Now, in the spring of 1937, how many men did you have in your employ? A. About ten.

Q. And the last witness whose name was Monar? A. Monar.

Q. Was also employed by you in 1937, was he not? A.
941 That is right.

Q. For how long a time in the early part of 1937 was he employed by you in the City of New York? A. From May on, you mean?

Q. Well, was he employed by you in the city for work to be done in the City of New York? A. That is right.

Q. How long was he so employed doing city work in New York City? A. I should say about a couple of years. I don't know for sure.

Q. So that would bring us back to 1935 or probably 1936 and 1937 he was your New York City driver? A. Yes.

Q. And in that period of 1935, 1936 and 1937, you did not have a contract with Local 807? A. That is right.

Q. In the summer of 1937 did you have a New York
942 City driver? A. (No answer.)

Q. Well, let me put it this way: When Monar started to become and became an over-the-road driver for you did you employ somebody else for the city work? A. After May?

Q. Yes. A. Yes.

Q. Whom did you employ after May? A. Beginning with Victor Weaver.

Q. Victor Weaver? A. Was the first man.

Q. And how long did Weaver work for you in the place of Monar doing the city work? A. A couple of weeks.

Q. And then, after Weaver, whom did you employ as city driver? A. There were three that took turns. Williams, Wiederman and Broderick.

Q. Williams, Wiederman and who was the third? A. Broderick.

Q. In 1936 was that your customary and usual practice, to have a New York City man work for you for the city work? A. 1936? No.

Q. Well, didn't you have this fellow Monar working for you in New York City in 1936? A. He unloaded and loaded the trucks that he brought in, yes. 944

(Last answer read.)

Mr. Boudin: May we have the witness instructed to talk louder? I am trying to follow. I catch one word out of ten sitting here.

The Court: Will you try to speak louder, Mr. Steller, please?

The Witness: I will, sir.

Q. Now, you are aware, of course, of the fact that the State of Connecticut laws require the keeping of certain time cards for drivers, are you not?

Mr. Marks: I object to that as immaterial.

The Court: I will allow that question. 945

A. Not the State.

Q. The State of Connecticut? A. Interstate commerce.

Q. No.

The Court: No. The question is, are you aware of the fact that the laws of Connecticut require it. Did they as far as you know, or did they not?

The Witness: No. I don't think so.

Q. Are you aware of the fact that the laws of the State of New York require truck operators and drivers to keep time records?

Mr. Marks: Same objection.

The Court: I will allow that.

A. For a time we had cards printed for that purpose. Then I understand that they turned the law down.

Q. In any event, in 1937 were your drivers instructed by you to keep time cards required under the law of the State of New York?

947 Mr. Marks: Objected to as not within the scope of the direct.

The Court: I will allow that. You may answer.

A. Will you ask the question again?

Q. (Read.) A. If it was that time that the law was in effect. I don't remember when that law was in effect.

Mr. Maguire: Will your Honor take judicial notice that it definitely was in effect at that time?

The Court: I will, and he says, as I understand it, that for the period that he understood the law was in effect he kept time cards.

Q. Now, where are these time cards?

948 Mr. Marks: I object to that as immaterial.

The Court: I will allow that.

A. I don't think we have them any more.

Q. Where did you keep them?

Mr. Marks: Same objection.

The Court: He may answer.

A. At our office.

Q. Can you tell us what happened to these time cards? A. I believe we destroyed them.

Q. How long ago did you destroy the time cards?

Mr. Marks: I renew the objection, your Honor, along these lines.

Q. How long ago did you destroy these time cards? A. I don't remember, sir.

Q. Did you in connection with your business keep a record of all the merchandise that is loaded onto a truck, and of the consignees that are to receive merchandise from that particular truck? Have you kept such records as that? A. Bills of ladings, yes. 950

Q. And did you keep such records in 1937 and up till May, 1938? A. I believe I still have them.

Q. And did you then also keep a record of what pick-ups were made by your trucks in the City of New York? A. No.

Q. Now, let us see. When the man would get through unloading a truck in the City of New York, going around to the different consignees, it was then his job, the job of the driver of the truck to go around and make the pick-ups for the return trip, wasn't it? A. Right.

Q. And don't you, or didn't you, keep a record of what merchandise was going to be transported from New York back to the various points in Connecticut? A. The bill of lading, which I answered before. 951

Q. All right. Now, are those bills of lading kept in your office? A. Yes.

Q. Could you produce those? A. Did I?

Q. Could you?

The Court: Could you?

A. Yes. I think I can.

Q. Now, operating ten trucks you must have some time schedules, don't you? A. No.

Q. Did you in 1937 or 1938 have any operating schedules covering the trucks, showing possibly the time when they would leave Connecticut, the time they were due in New York, the time of the return? A. No.

Mr. Marks: I object to this as irrelevant and immaterial.

The Court: I will allow it.

Q. Do you keep a time clock at your warehouse or garage in Shelton?

953

Mr. Marks: Same objection.

The Court: Same ruling.

A. No, sir.

The Court: What was the answer?

The Witness: No.

Q. Did you keep any record in 1937 or 1938 of the time worked by your various drivers? A. The time what?

Q. The time worked by the various drivers employed by you. A. No.

By the Court.

954

Q. Did you have a time book? A. No.

Q. Did your men work by the day or did they work by the hour? A. By the day.

By Mr. Maguire.

Q. Now, you are aware, are you not, that compensation insurance is based on a payroll? A. That is right.

Mr. Marks: I object to that as immaterial.

The Court: I will allow it. The answer is yes.

Q. Will you tell us, if you had no record showing the hours of service of the men, how you kept your payrolls?

Mr. Marks: I object to that on the same ground.

The Court: How is that material here?

Mr. Maguire: I am trying to find out, sir, the hours of employment of these drivers.

The Court: How is that material?

Mr. Maguire: It is material, sir, in the respect of showing that these men were working onerous and burdensome hours; that this was a union condition, and it was absolutely essential to the welfare of the union to try to reasonably regulate and control the hours of work of the truck drivers. 956

Mr. Marks: May I be heard on that, your Honor?

The Court: I am going to sustain the objection.

Mr. Maguire: I respectfully except.

Mr. Boudin: Exception. If your Honor please, I also respectfully submit that that is material on the credibility of the witness.

Q. Did you in 1937 keep records on the basis of which you made payments for social security? A. Yes.

Mr. Marks: Same objection. 957

The Court: Sustained.

Mr. Maguire: Exception. That is all.

The Court: Anything further from this witness?

Mr. Maguire: No further cross.

The Court: Next witness.

Mr. Aronstein: Will your Honor bear with me for a moment?

The Court: This witness?

Mr. Aronstein: Yes.

The Court: Yes. Wait.

(Mr. Aronstein conferred with Mr. Maguire.)

Mr. Maguire: One question more, if your Honor please.

The Court: All right.

Q. Have you in the last three or four years been at any time a member of the Highway Transport Association?

Mr. Marks: I object to that as not within the scope of the direct.

The Court: I will allow it. Yes or no.

959

A. Yes.

Q. Are you at the present time? A. No.

Q. In the period, December 31st or December 1, 1936, to May 31, 1938, did you have any conversation with one Joseph Adelizzi of the Highway Transport Association?

Mr. Marks: Objected to as irrelevant and immaterial.

The Court: He may answer yes or no.

A. No.

Q. And have you since that time had any conversation with Joseph Adelizzi?

960

Mr. Marks: Same objection.

The Court: He may answer that yes or no.

A. No.

Mr. Maguire: That is all.

The Court: It was not necessary to bring him back for that. That is the reason I allowed him to

say yes or no. If he said yes I would not have allowed him to go any further on that score.

(Witness excused.)

Mr. Marks: I will call Mr. Mattson.

BENJAMIN MATTSON, residing at Swedesboro, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Now, Mr. Mattson, will you sit down? A. Yes. 962

Q. Will you try to keep your voice up, Mr. Mattson, so we can all hear you? A. Yes.

Q. Where are you employed? A. At the time I worked for H. Strozyk——

The Court: Where do you work now?

The Witness: For H. Strozyk, trucker.

Q. How long have you worked for Strozyk? A. About six years.

Q. Now, where is Swedesboro, New Jersey? A. Just about twenty mile below Philly.

Q. How far is it from New York City? A. About 120 mile all together.

Q. From New York? A. Yes. 963

Q. When did you begin driving trucks to New York City? A. About five years ago.

Q. And when you began to drive trucks into New York City did you unload them yourself? A. Yes, sir.

Q. Did there come a time when you stopped unloading the trucks yourself in New York City? A. Yes, sir.

Q. When was that? A. When the union first——

The Court: You will have to speak up. I do not think anyone hears what you say.

A. (Continued) When the union first started, whenever that was; about three or four year ago.

Q. Can you place it any more definitely than that? Do you remember what year it was? A. About 1937.

Q. Do you know what part of 1937? A. No, I don't.

Q. You don't remember what part of the year? A. It was in the spring that they first started.

Q. In the spring they first started stopping your truck? A. In the spring of the year.

965 Q. How did you enter New York City? By what route? A. Came in through Jersey City, and the biggest part of the time I crossed the Liberty Street Ferry.

Q. I didn't quite hear you. Liberty Street Ferry? Is that what you said? A. Yes.

Q. Where does that enter New York? What street.

The Court: Liberty Street.

A. Liberty Street comes down on West Street.

Q. That enters on West Street? A. Yes.

Q. And that is downtown on the west side? A. Yes.

Q. And from there you drive to the point where you make your deliveries? A. That is right.

Q. And where were you first stopped? A. It was on
966 West Street the first time.

The Court: Between where?

The Witness: It was up around between Canal and 21st Streets.

Q. Now, just how were you stopped? A. Well, we were stopped by a couple of fellows in the car who drove up alongside of me and told me to pull over to the curb and stop——

Q. They drove up alongside of you and what? A. And they told me to pull over to the curb and stop, and I did so. And they already caught one of our other trucks the same day——

Mr. Maguire: May I move to strike that out?

The Court: Strike it out.

Q. What happened after you were stopped? A. They asked us if we had a union man on the truck, and we told him no, we always had a helper on the truck because we was hauling ten ton of oil, and the oil was in drums, and the drums weighed over 450 pounds. We always need help on them to unload, and we always carried a helper of our own on and always had help most generally for a miscellaneous load anyhow. We always needed a helper. 968

By the Court.

Q. Do you know the names of either one of these men? A. No, I don't.

Q. Have you ever seen either one of them since? A. That I could not say.

Q. Well, do you see either one of them in the court room now? You can get up and step down if you want to look around. A. I hardly think I would know him if I did see him, if they were here, because it has been so long ago.

The Court: All right. 969

By Mr. Marks.

Q. What did you say to them when they asked you if you had a union man?

Mr. Maguire: May we object?

The Court: Sustained.

A. Well——

Mr. Cahill: Don't answer.

Mr. Maguire: And may we move to strike out the testimony as to these unknown people?

The Court: Yes.

Q. Did you unload the truck yourself that day? A. No, I had a helper with me that day.

Q. Did you and your helper unload it? A. No, sir.

Q. Who did? A. We finally waited, and these other fellows unloaded it.

Q. Did you pay them any money?

Mr. Boudin: Objected to as immaterial.

971 The Court: Sustained.

Mr. Marks: If your Honor please, may I be heard on that?

The Court: If you want to be heard I will be glad to hear you.

Mr. Marks: Thank you, sir.

The Court: But I am excluding the testimony at this time because it was paid to somebody, not to the unknown soldier.

Mr. Marks: Well, if your Honor's mind is made up there is very little reason for my being heard.

The Court: Tell me who these men were and I will be glad to allow you to have the witness tell what he paid them.

972 Mr. Marks: The indictment, of course, alleges that persons unknown to the Grand Jury were participants in the conspiracy.

The Court: That would all come under the indictment here if you could show that they were particeps criminis after the establishment of a conspiracy; but just to say that two men drove in from New Jersey and somebody stopped them and unloaded their truck or barrels of oil and got paid for it—I do not see how that comes in here yet.

Q. Now, after that first time that you were stopped was your truck stopped again? A. Oh, yes, regular after that.

Q. Where was it usually stopped after that?

Mr. Murray: May I have the time fixed, if your Honor please?

The Court: You can fix the time.

Q. Well, before you tell us where, tell us when.

By the Court.

Q. How many times did you come to New York each week? A. Well, we traveled up here regular. 974

Q. And did you come back light or loaded? A. Light.

Q. And you went back the same day the oil was unloaded on this first occasion? A. Yes.

Q. When did you come up after that? A. Well, we traveled up here for——

Q. No, but when did you come up here after that, how many times afterwards? A. We still hauled daily because we was working for the Vacuum Oil, and we would get anywhere from, I would say, 100 to 300 tons of oil a week.

Q. Not on one truck? A. Oh, no.

Q. But I am talking about your truck? A. Yes?

Q. You went back to Swedesboro? A. That is right.

Q. After these barrels of oil or drums of oil were discharged; is that right? A. That is right. 975

Q. And were they discharged at more than one place? A. Sometimes.

Q. Well, along the line from Canal Street to 21st? A. Well, we had miscellaneous stuff; East River, North River and Brooklyn.

Q. Did these men follow you along in this car they were in? A. Oh, yes.

Q. And then when you reached the place, did they get out and take the drums off the truck? A. They did if we would let them.

Q. Well, the question is, whether they did or not. A. Yes, if we let them.

Q. Did you let them? A. Yes, sir.

Q. All right. Now, after you disposed of all the drums on the truck, you went home? A. That is right.

Q. When did you come back to New York again? A. The next day or the following day, because we was hauling up here daily.

Q. I am talking about when you came back, not other
977 drivers, but you. A. I am talking about myself, too.

Q. The next time that you came back, a day or two later, were you stopped again? A. Yes, sir.

Q. By the same two men? A. No, there was—we was stopped the first time, and then these fellows that stopped us sent for the boss, and they said——

Mr. Boudin: One moment. We object to any conversation.

The Court: Yes, strike that out.

Q. Just answer my question. Were you stopped the next time you came up by the same two men who stopped you the first time you came up? A. Yes.

Q. The same two men? A. Yes.

978 Q. Did they unload the drums on that occasion? A. Yes.

Q. And how long did that take? A. Well, if it was only one stop it would not take very long, but a miscellaneous load in these piers up here you would have to wait in turn for your delivery.

Q. Well, you saw them unload the truck both times, didn't you? A. Yes.

Q. The first time and the second time? A. Yes.

Q. Were you standing there while they were unloading? A. We always helped them unload.

Q. And you don't know now who those men were? A. No, I don't.

Q. And you would not recognize them, you say, if you saw them? A. I don't think so.

The Court: All right. Now, go on and find out how many times he was stopped and who stopped him.

By Mr. Marks.

Q. Did you pay those men the first time? A. That is right. 980

Mr. Boudin: I object to that.

By the Court.

Q. Well, did you give them any money? A. Well——

Q. Just answer the question. Did you give them any money? A. Yes.

By Mr. Marks.

Q. How much?

Mr. Boudin: I object to that.

The Court: I will allow him to say how much he gave them. 981

Mr. Boudin: Exception.

A. $9.42 from our truck which was a tractor and trailer.

Q. And do you remember how long it took to unload your truck the first time?

Mr. Boudin: Objected to as immaterial.

The Court: I will allow him to say.

Mr. Boudin: Exception.

A. No, I don't.

Q. Did you pay them any money the second time? A. Yes, we did. We started bringing up the blank checks——

Mr. Boudin: Same objection.

The Court: No, strike that out. The question was, did you pay them any money and the answer is, Yes, we did?

The Witness: Yes.

983 Q. How much? A. $9.42.

Q. Do you remember how long it took you to unload that second time? A. No, I don't.

Q. After that how often were you stopped? A. Well, we was stopped nearly every load after that.

By the Court.

Q. By the same men? A. Well, not all, no. There was different ones at different places.

Q. Do you know the names of any of the persons, or did you ever learn the names of any of the persons who stopped you? A. Well, the last fellow we had a contract with who was unloading us regular——

984 Mr. Boudin: One moment, if your Honor please.

The Court: Strike that out.

Q. The question I asked you was whether you ever learned the name. That is all I want to know, if you learned the name. A. His name——

Q. No, I did not ask you what his name was. I asked you if you learned the name. A. Yes.

Q. Now, do you know the name? A. I would know him if I saw him.

Q. Do you see him here? A. I don't think so.

Q. Well, you can step down and look around. You can go down on the floor if you can see better from down there. A. (Witness steps down.)

Q. Do you see anyone there that you recognize? A. This fellow right here (indicating).

Q. Indicate which one he is. A. This fellow here (indicating). That was his helper there (indicating).

Q. Which one is the helper? A. This fellow here (indicating).

986 Mr. Marks: May the clerk call the names of Manuel Magan and Tony Venditti?

The Court: Manuel Magan and Tony Venditti.

(Two men stood up.)

Mr. Marks: And may the record show the same two men responded as the witness pointed out?

The Court: No. The record may show that in response to the names called by the clerk that the two persons who were indicated by the witness arose.

Mr. Marks: All right. You may return to the stand and sit down.

(Witness returns to stand.)

By Mr. Marks. 987

Q. Now, are there any other persons who stopped your truck whose names you know? A. There was another fellow by the name of Dillon who was the head of a small crew of men.

Q. Do you see him here? A. I don't know whether I would know him if I saw him. I do know he is a stout fellow, heavy set, but I would not recognize him if I saw him.

Q. Well, are you sure you would not recognize him, or do you want to step down and look around and see if you can find him? A. (No answer.)

Q. Suppose you step down and see if you can find him in the court room. Step down and walk over there, Mr. Mattson, if you will. A. (Witness steps down and looks at defendants.)

Q. Take your time. A. I don't think I can place him up there.

Q. Do you see there the names of any other persons who stopped you?

The Court: Not the names.

989 Mr. Marks: I beg your pardon.

Q. Do you see there any other persons besides Dillon who stopped this truck? A. Some of Dillon's gang.

Q. Will you point them out? A. The red headed one over there in the front row (indicating).

The Court: Which row?

The Witness: The front row.

Q. Which one is that? A. The third one in the front row.

By the Court.

990 Q. Well, how is he dressed? A. The fellow with the red hair. I guess he is the only one there.

Q. How is he dressed? A. The fellow with the sweater on.

Q. What color is it? A. Black and gray.

The Court: All right.

Mr. Marks: Will the clerk call the name of Abraham Klenofsky?

The Clerk: Abraham Klenofsky.

(A man stood up.)

Mr. Marks: May the record show that Abraham Klenofsky is the man that the witness pointed out?

The Court: Yes.

By Mr. Marks.

Q. Now, are there any others there who stopped your truck, in this court room? A. There may be, but I don't recall their faces.

Q. Did Klenofsky ever stop your truck, the red headed man that you just pointed out?

992

The Court: The one you just pointed out here.

A. I don't think he ever stopped the truck, but he was the one that helped unload it. We always used to have certain places to go, which place is up at 22nd Street, up at the diner up there; we would stop there and pick our man up and deliver the trucks, and he was in with Dillon's gang.

Q. Where would Dillon and the others with him stop your truck?

The Court: Not where would they, but where did they.

A. They didn't get a chance to stop it after we would go to the diner—— 993

Q. No, just answer the question. A. Well, wherever they might catch us, which was all over Brooklyn and up in the Bronx and often out to Queens; all over.

Q. Did they ever catch you as you drove off the ferry?

Mr. Murray: I object to that term.

The Court: Yes, I will sustain the objection to the characterization.

994 *Benjamin Mattson—For Government—Direct.*

By the Court.

Q. When you drove off the ferry did you ever see Dillon? A. No.

Q. Did you ever see anyone else with whom you had any conversation? A. They never bothered at the ferry, right at the ferry. They generally got us——

Mr. Boudin: If your Honor please, we cannot hear a word here.

The Court: "They never bothered at the ferry." That is the end of that. Next question.

995 *By Mr. Marks.*

Q. How would they stop you?

Mr. Murray: I object to that.

Mr. Boudin: I object to that.

The Court: Sustained.

Q. What happened when you saw them?

Mr. Murray: I object.

The Court: Well, I will sustain the objection. I think that question is too general.

Q. Were they in automobiles? A. Yes, they was.

996 Q. When did you first notice the automobiles? A. Well, there was so many of them, that we would be riding around making our deliveries and we always handled canned goods all over New York City or in different places over the city, and there was always somebody that saw us at different places of the city. It was hard to keep away from them.

Q. Did they ever approach you after you had already unloaded part of the load yourself? A. Oh, yes.

Q. How often did that happen? A. Quite often when it first started.

Q. And what happened on those occasions? A. Still had to pay the full amount to unload it.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. What did they say when they caught you on those occasions?

Mr. Maguire: I object to that expression.

The Court: Sustained.

Q. What did they say when they approached you on 998
those occasions? A. They asked us if we had a City man. If we told them no, why, all they had to say to the checker——

Mr. Maguire: I object to the general term used in describing the individual.

The Court: Yes, I will sustain that.

By the Court:

Q. Somebody asked you if you had a City man? A. That is right.

Q. And you did not have any? A. No.

Q. And then somebody helped you to unload your truck? A. Yes. 999

Q. And then you gave somebody some money? A. Yes.

By Mr. Marks.

Q What did they say when they unloaded the truck?

Mr. Maguire: Objected to.

The Court: What did who say?

Mr. Marks: The persons we are talking about, your Honor.

Mr. Murray: Who are they?

The Court: How would a defendant expect to controvert a conversation that somebody testified to if there was no identification of the person with whom this alleged conversation took place?

Q. What did Dillon or anybody with him say before he or they unloaded the truck? A. Well, after the contract was drawn, why, we always——

Q. No, at first.

1001

The Court: No. We don't know anything about any contract.

A. After the contract was——

The Court: No.

Q. No, before the contract. A. There wasn't but a few loads in here before the contract was signed.

Q. Well, those are the loads we are talking about now. What did Dillon or anyone with him say before he or they unloaded on those occasions?

Mr. Murray: Might I ask to have the time fixed, if your Honor please?

1002

The Court: Yes, fix the time. What year was it?

The Witness: It was in the spring of 1937, I believe.

Mr. Marks: May we have that last question read?

The Witness: It was in the spring of 1937.

The Court: Read the question.

(Question read.)

Q. Did you hear the question? A. I didn't quite catch it.

The Court: Well, the stenographer will repeat it again. Listen carefully.

Q. (Reread.) A. Well, they wanted the boss to come up and sign a contract for the unloading purposes. There wasn't much said outside of the contract.

Q. Can you remember anything else that was said? A. No, I believe that is about all.

Q. Did they ask you if you wanted to hire them? A. There wasn't no question of what we wanted to do. It was what we had to do.

1004

Q. Well, what did they say? A. They said we had to put a City man on the truck in order to unload.

Q. What did you say? A. There was nothing we could say.

By the Court.

Q. Did you say anything? A. We just put them to work, that was all, and let them go ahead and unload the truck.

By Mr. Marks.

Q. Now you say you usually had one helper with you? A. We did before it started, yes, but after it started, after we had to pay to unload it, why, we was traveling just one driver in the truck.

1005

The Court: Just one driver in the truck?
The Witness: Yes.

Q. How many men were usually with Dillon? A. Oh, there was, I guess, eight or ten in that gang.

Q. How long did they usually work for the $9.42?

Mr. Maguire: I object to it.

The Court: Sustained.

Q. How long did it take them to unload your truck?

Mr. Maguire: Objected to.

The Court: He has already told us that if it was one delivery at one place it took less than if there were a number of deliveries at a number of different places widely scattered.

Mr. Marks: May I pursue that a little further?

The Court: Yes, if you identify the particular occasion. He can tell how long it took on that
1007 particular occasion. We can't have any speculation about it.

The Witness: Sometimes we had straight loads.

Mr. Maguire: I object to it and move that it be stricken out.

The Court: I will allow it.

Mr. Maguire: Exception.

Q. When you had these straight loads how long did it take to unload? A. Sometimes——

Mr. Maguire: I object to that.

A. (Continued) Sometimes twenty to thirty minutes.

1008 The Court: I will allow it.

Mr. Maguire: Exception.

The Witness: Twenty, thirty or forty minutes because we helped them.

Q. Did you ever have any conversation about your helping them? A. I don't think so.

Mr. Maguire: I object unless the person is identified.

The Court: The answer is "I don't think so." If the objection is pressed I will sustain it and strike out the answer.

Mr. Maguire: Withdrawn.

Q. And you always paid them the same amount? A. Yes.

Q. No matter how long the work lasted, is that right? A. That is right.

The Court: I will exclude that question on my own motion as being argumentative and also on the ground that it is counsel and not the witness who is giving the testimony. 1010

Q. Now, do you know if your employer signed a contract with the union? A. I do.

Q. Do you know about when that was? A. That was right after we first started in the early spring.

The Court: Well, strike out the answer. The question calls for a date as nearly as you can give it.

The Witness: Oh, I couldn't tell.

The Court: Do you know what year it was?

The Witness: It was in 1937.

The Court: Do you know what month it was?

The Witness: No.

Q. Well, with respect to the time that Dillon and the others first began to stop your truck, how long after that was the contract signed? 1011

Mr. Boudin: That is objected to.

The Court: Sustained.

Mr. Marks: I think, your Honor, the witness may be permitted to fix the time by another occurrence.

The Court: I don't think so. It is a written contract, isn't it?

Mr. Marks: Yes, sir.

The Court: Well, you haven't shown yet that you can't produce it, and if you produced the contract there wouldn't be any doubt about it.

Mr. Marks: I will produce it at the proper time, your Honor, but I can't do it through this witness.

The Court: If you can't produce it through this witness and you expect somebody who is more competent as a means of producing the contract, I would expect that you might defer the examination about the contract until we get it here.

1013

Mr. Marks: I was merely trying to fix a time. However, I will drop it.

The Court: I don't care what the time is as far as this witness' recollection is concerned. If there is a means of fixing the exact date of the contract, let us get down to the point of this thing and do it. What is the use of wasting time? Having somebody guess at something when you are going to produce the contract with the date on it. Proceed. There must be some expedition about this case. What is the next question?

By Mr. Marks.

1014 Q. Do you remember one occasion after the contract was signed when you had a load in New York City for a pier? A. Yes, sir, I do.

Q. Do you remember when you had one five-gallon less?

The Court: Why don't you let the witness testify?

Mr. Maguire: I object.

The Court: You are doing all the testifying.

Mr. Marks: I am trying to fix a specfic occasion in his mind.

The Court: Maybe he can do it as well as you can. You are telling him exactly what you want him to testify.

Mr. Marks: I haven't told him anything——

The Court: Pardon me, you have. You have been identifying circumstances by putting particulars in there. You exhaust his recollection and see whether he knows about these things without telling him about them.

By the Court. 1016

Q. Do you remember an occasion when you made a delivery in New York after the contract was signed? A. Yes.

Q. When was it? A. It was right after we first started.

Q. How long was it after the contract was signed? A. It wasn't over three or four weeks afterwards.

Q. Where was the delivery made? A. I had a miscellaneous load on my truck, and one of the other small trucks was up here. He had made one stop in the North River and he had another stop left on his truck, and when the union caught up with him——

Mr. Boudin: I move to strike it out.

The Court: Strike it out. Repeat the question. 1017

(Question read.)

Q. That is the question. Where was the delivery made? A. There was a miscellaneous load, East River, North River and Brooklyn, and we saved the North River for the last stop.

Q. What was the item for the North River? A. One five-gallon case.

Q. Where was it to be delivered? A. Pier 58.

Q. North River? A. North River.

Q. Were you on the truck at that time? A. I was. I pulled the truck down in front of Pier 56 and walked back with the one case and give the checker my slips and he give me a number and I stood in line until they called my number out so I could check the one five-gallon can in.

Q. How long were you there in line? A. About twenty minutes.

Q. Did you leave the case there? A. When he called——

Q. No. Did you leave the case there? A. Oh, yes.

Q. Then did you come out of the pier? A. No. I stood
1019 there and waited for him to call my number so I could get my slips and go on home, because that was the last case. I had been two days on that one truck——

Q. No, no. Don't give us an explanation of that. Just confine yourself to the question that I have asked you. You said that you got into line. I asked you how long you were in line. A. About twenty minutes.

Q. All right. Did you get your slips? A. I turned the slips over to the checker.

Q. What did he give you? A. He give me a little piece of paper with a number on it, the same as they always do, and when they called my number out, why, I stepped up to get the receipts.

Q. What happened? A. When three other fellows was there——

1020 Q. Did you know any of them? A. No, I didn't.

Q. Do you know who they were now? A. Well, one of them was Dillon. The other two fellows I didn't know.

Q. You mean you have seen this man before whom you now say was Dillon? A. He was the one that had——

Q. Well, had you seen him before? A. Yes.

Q. How many times? A. He had been unloading us for quite some time.

Q. That is what I am trying to get at. Now, what happened? A. Well, when he called my number out, all he said to the checker was, "No union, no City man on this truck."

Q. Who said that? A. Dillon, and the checker give me back the slips. So I picked up the five-gallon can and was taking it out to the truck when the three of them followed me and asked me where I was going. I told them I was going to take it back where I got it from, because I wouldn't pay them $9.42 to deliver the one case.

Q. Did they ask you for anything? A. Yes.

Q. Who spoke? A. Dillon.

Q. What did he say? A. Well, he asked me what I was 1022
going to do with the case, and I told him I was going to take it back. The one five-gallon was supposed to sail within an hour or two——

Q. No, no, never mind about that. What did he say to you? A. He asked me where I was going. I told him I was going to take it back. I said I wasn't going to pay the full amount for delivering one case.

Q. Well, did you pay any money to anybody? A. I finally did have to pay $9.42 to get the one case delivered.

Q. Did you pay it in cash? A. No; by check.

Q. All right. Now, what did you do then? Did you go back to your automobile?

Mr. Marks: May I interrupt, your Honor?
The Court: Yes. 1023

By Mr. Marks.

Q. What happened before you paid the money? A. Well, it wound up in Dillon's hitting me. After I said I wasn't going to pay the money for delivering one case, why, he got kind of hot about it. This $9.42—that was the price they charged for unloading the trailer. If we could unload

the truck without paying the $9.42, why, the boss would split between us the $9.42, and it would make our wages more. It was worth working for, and having to pay it out for one case, why, that would make anybody kind of mad.

The Court: Who signed the check that you gave these men?

The Witness: The boss did.

The Court: Who filled in the amount?

The Witness: Well, he give us a check already made out. I always drove the trailer. It was $9.42.

Q. You say Dillon hit you? A. Yes.

1025 Q. Where did he hit you? A. He hit me under the chin here (indicating) and it wasn't no easy crack, either.

Q. Have you still got a scar there? A. That is right.

Q. You were alone at the time? A. I was alone.

Q. How many people were with Dillon? A. There were two others besides him. He hit me and one fellow caught me.

Q. After he hit you did you pay him the $9.42? A. I did after I called the boss and asked him what he was going to do——

The Court: No, don't give us the conversation.

Q. At any rate, you paid him the money after he hit you? A. Yes.

1026

Mr. Marks: Is this an appropriate time to adjourn, your Honor? That is, I am not finished with the witness, but I am finished with this particular line of questioning.

The Court: Well, we will suspend then, if that is the case, until 10.30 tomorrow morning.

(Adjourned to April 18, 1940, at 10.30 A. M.)

New York, April 18, 1940, 10.30 A. M.

TRIAL RESUMED.

(The clerk called the roll of defendants and Edward Weinheimer and Francis Powers were absent.)

(Subsequently Edward Weinheimer appeared.)

Mr. Cahill: Judge, may we step up a minute?

The Court: Yes.

(Discussion off the record between the Court and counsel without the hearing of the jury.)

1028

BENJAMIN MATTSON resumed the stand.

Mr. Marks: No further questions.

Mr. Cahill: Judge, am I correct in assuming that we still have a defendant missing here?

The Court: No. I thought they came in.

Mr. Cahill: Is Powers here?

The Court: I thought Powers came in.

(The clerk called the name of Francis Powers and there was no response.)

The Court: I am going to say now if there is going to be any tardiness on the part of the defendants I will have to take some action about it because there are so many people in the case, if somebody is late every day it results in that much delay 1029
and prolongs by that much the trial of this case. Mr. Murray, would you mind stepping up, and Mr. Cahill.

(Discussion off the record between the Court, Mr. Cahill and Mr. Murray without the hearing of the jury.)

(The defendant Powers entered the court room at 10.48 A. M.)

The Court: Powers?

Defendant Powers: Yes, your Honor.

(The Court confers with the defendant Powers at the bench.)

(Proceedings up to this point read by the stenographer for the defendant Powers.)

Mr. Marks: No further questions.

Cross-examination by Mr. Murray.

Q. When did you first go to work for your employer in New Jersey? A. In the fall of 1935.

1031 Mr. Murray: Your Honor, might I say that it is almost impossible for counsel at the table to hear this witness.

The Court: Yes, you will have to speak louder.

Mr. Murray: May I have the answer repeated?

(Answer read.)

Q. Whom had you been employed by before that? A. I was working anywheres I could get work.

Q. Were you a licensed chauffeur? A. No. Before then, no.

Q. When did you get your license as a chauffeur? A. Oh, I got my license when I was seventeen years old.

Q. In the State of New Jersey? A. In the State of New Jersey.

1032 Q. Then did you have it continuously up to the time that you went to work for your employer in New Jersey? A. That is right.

Q. Now, in 1935, when you first went to work, what was the name of your employer? A. Edward Strozyk.

Q. Well, was the outfit you were employed by ever known as the Eastern Southern Transportation Company? A. At that time they were.

Q. Do you know how long they continued to be known by that name? A. That I couldn't say.

Q. Well, when did the man whose name you just mentioned come in as your employer? A. Well, he was the foreman at the time that they were running under the Eastern Southern Transportation.

Q. Do you happen to know whether or not he owns the outfit by which you are now employed? A. No, I do not.

Q. Beg pardon? A. No, I don't.

Q. Do you know a man named Hurff? A. Yes.

Q. And do you know whether or not Mr. Hurff had any connection with the Eastern & Southern Transportation Company? A. I do not.

1034

Q. Do you know a man named Burns? A. Yes.

Q. Did Burns have any connection with the outfit by which you were employed? A. I don't think so.

Q. Beg pardon? A. I don't think so.

Q. Well, now, what ton truck did you operate as a chauffeur? A. Ten-ton tractor and trailer.

Q. Did it carry New Jersey licenses? A. Yes, sir.

Q. Did it carry New York licenses? A. No, sir.

Q. Was that truck driven into New York City each day—I mean outside of Sundays and holidays? A. Yes.

Q. Did you operate it every day from New Jersey to New York? A. Well, we always had the one truck unless something went wrong with the truck, and we used another truck to finish out.

Q. Now, were there any license plates on it besides New Jersey license plates? A. No, sir. 1035

Q. Was there an I.C.C. symbol on the truck? A. Oh, yes, we had I.C.C., but no New York license.

Q. Now, you run from——

The Court: Mr. Murray, is there any objection to having it stated for the benefit of the jury what "I.C.C." means?

Mr. Murray: No, your Honor, there is not.

The Court: Interstate Commerce Commission.

Q. Now, just where was your headquarters in New Jersey located? A. Swedesboro.

Q. And that is how many miles from New York? A. 120.

Q. Did you come through the Holland Tunnel when you came to New York? A. No, not unless we was in a big hurry to get into the city and unload before it would hold us up.

Q. Won't you please try to keep your voice up? What manner did you usually employ in getting to New York
1037 from New Jersey? A. Came across the ferry.

Q. What ferry? A. Liberty Street Ferry and then if we was going uptown we used the 23rd Street Ferry.

Q. Now, it was on rare occasions, was it, that you came through the Holland Tunnel? A. That is right.

Q. Do you know where the headquarters of Local 807 is in New York City? A. No, I don't.

Q. Did anyone ever tell you that it was on Varick Street? A. I did hear the union men say where it was at, but I have forgotten.

Q. Did you ever see any members of Local 807 at the Holland Tunnel when you came in from Jersey? A. It was very seldom. I don't think while we was hauling freight, we very seldom used the tunnel.

1038 Q. I know, but when you did use the tunnel did you ever see any members of Local 807 at the tunnel waiting for you? A. I never took any notice.

Q. And did you ever see any of those men whose names you mentioned yesterday as members of the union at the Holland Tunnel when you came in and used the Holland Tunnel? A. No, sir.

Q. Now, what kind of freight or merchandise did you usually truck from New Jersey to New York? A. Hauling canned goods for this Hurff.

Q. For whom? A. Hurff.

Q. How do you spell it? A. H-u-r-f-f.

Q. Is that the name of the man that I mentioned to you earlier in your cross-examination? A. Yes.

Q. Where was his place of business? A. Swedesboro.

Q. And what kind of merchandise did you haul? A. It is all canned goods.

Q. Cans containing what commodities? A. Tomatoes, asparagus and peas.

Q. Well, did you frequently haul oil? A. Yes, sir.

Q. What kind of oil? A. Well, for the Socony-Vacuum out of Paulsboro.

Q. Where did you pick up your load of oil? A. Paulsboro. 1040

Q. And how far is that from Swedesboro? A. About eight mile.

Q. Now, when you came to New York with a load of oil did you first go to Paulsboro—is it? A. That is right.

Q. —and pick up your load there? A. That is right.

Q. And then did you drive back to Swedesboro before you started to New York? A. At times we did.

Q. Now, who loaded your oil in Paulsboro? A. The Socony-Vacuum loaded all trucks.

Q. Now, between Swedesboro and New York did you make any other pickups when you drove these loads of freight? A. No, sir.

Q. When you carried a load of oil you carried the oil in what is commonly known as drums, didn't you? A. There 1041 was a lot of cases, wooden cases and cardboard cases; five-gallon cans, two-gallon cans, one-gallon cans, and whatnot.

Q. Did you have drums also? A. Yes, sir.

Q. Did you ever exclusively truck a load of drums? By that I mean drums only and no other freight? A. Yes.

Q. Now, how large were these drums? A. They averaged 485 pounds apiece.

Q. Some of them average over 500? A. Well, they run from 475 to 500.

Q. How large were the drums, if you can estimate? A. Well, they are fifty-gallon drums.

Q. I know, but in size? A. Well, they will stand about 4 foot high and I guess about 3 foot across.

Q. I see. Now, will you try to fix the date when you say that Dillon first spoke to you? A. Well, at the time we was first stopped, the first trucks up here was stopped, I wasn't here that day.

Q. No; I say when did Dillon first speak to you, trying to fix the date as precisely as you are able to? A. That
1043 I don't know.

The Court: Haven't you any idea?

The Witness: Well, it was along about—right shortly after the union started.

Q. Now, to what union do you refer, the New York union or the New Jersey union? A. The New York union.

Q. Did you belong to a New Jersey union? A. No.

Q. Have you ever belonged to a union? A. Yes.

Q. What union did you belong to? A. The Bridgeton union.

Mr. Maguire: We can't hear a word.

Mr. Murray: I do not know whether the jury can hear this. I know my associates at the counsel
1044 table do not.

The Court: Let me ask juror No. 14 whether he hears what this witness says.

Juror No. 14: Yes.

The Court: Now, let me say that from the experience I have had in this court room, it has been commented by lawyers that you can hear better in this court room than any other court room in New York. I do not know. They all say that.

Mr. Murray: Unfortunately, Judge, that is not my experience, and I know of no defective hearing I have had, and I honestly can say to your Honor that we three counsel at this table did not hear 20 per cent. of what this witness said yesterday afternoon.

The Court: Well, it is the jury that I am most concerned about. Of course, I am equally anxious that counsel should hear for the purpose of properly representing their respective clients; but I feel it would be unfair to any of the defendants if the jury were unable to hear; and the jurors farthest away say they hear all right. However, I will again ask you to raise your voice, Mr. Witness. You are not going to be punished for contempt of court for talking too loudly here. 1046

Mr. Cahill: May I give him some water, Judge? He is coughing a good deal. It might help him.

The Court: Yes. I will say this, that if there are any answers that counsel do not hear, they can ask to have the stenographer repeat it.

Q. When did you become a member of the union in New Jersey? A. The fellow I worked for always took care of that.

Q. I say, when did you become a member of the union in New Jersey? A. That was before this.

Q. That was before this? A. Yes, that is right. 1047

Q. Is that your answer? What was before what? A. Before this union racket up here started.

Q. Did you belong to a union in the spring of 1937 A. Yes.

Q. What union did you belong to? A. The south Jersey union.

Q. What is the name of the local—the number of the local, rather? A. Local 896.

Q. 896? A. Or 897.

Q. Don't you know the name of the local that you belonged to—the number, rather? A. I just got done telling you the boss took care of that.

Q. Did you make an application to become a member of the union in New Jersey? A. No, sir.

Q. Did you ever sign an application? A. No, sir.

Q. Were you ever in the union rooms? A. No, sir.

Q. Did you ever pay union dues?

Mr. Marks: I object to this as irrelevant and immaterial; beyond the scope of the direct.

1049 The Court: I will allow it.

A. I had union dues taken out of my wages, and I took care of the rest.

Q. What dues were taken out of your wages? A. There was $2 a month taken out of the wages.

Q. Did you have a union card? A. No.

Q. Or a union button? A. No.

Q. Did the union ever give you anything to indicate you were a member of it? A. Not to me they didn't.

Q. Did you know where the union headquarters were? A. Yes.

Q. Were you ever in them? A. No.

Q. Do you know the name of the delegate?

1050 Mr. Marks: Same objection; beyond the scope of the direct.

The Court: I will sustain the objection to that.

Q. Well, now, when you first came to New York, or, rather, when you first saw Dillon in New York, you estimate it was when? A. In the spring of 1937.

Q. Did you have a talk with Dillon at that time? A. No, I didn't, outside of the unloading.

Q. Yes. Was there any talk between you and him as to whether or not you were a union man? A. Yes, sir.

Q. Did you tell him you were a union man? A. Yes, sir.

Q. Did he ask to see your card? A. He asked me if I belonged to the union.

Q. I ask you, did he ask you to show your card, or did he ask to see your card, your union card? A. Yes.

Q. Did you show it to him? A. No, I couldn't. I didn't have any.

Q. Did he ask to see your union button? A. No. We always carried them on our hat if we had them; he could see them himself. 1052

Q. But you had none; is that right? A. That is right.

Q. Now, to get back to the tonnage of the loads that you carried: When you carried a load of oil, do you know about how many tons a load of oil made when it was on your truck? A. Always. Always.

The Court: Always he says.

Q. All right. Well, if you carried a truck full of oil contained exclusively in drums, do you know how much tonnage that would be when it was carted on your truck? A. Yes, sir. It took sixty drums to make ten tons where we returned full loads of drums. That is what it would take to make ten tons.

Q. Well, did you ever carry more than sixty drums on your truck? A. No, sir. 1053

Q. And sometimes did you carry sixty drums on your truck? A. Yes, sir.

Q. You said yesterday that you had heard something about your employer signing a contract with Local 807, but you didn't know when it was, is that correct? A. Yes, sir.

Q. Are you able to fix the time by directing your attention to the day that Dillon first spoke to you? A. We had conversations with Dillon——

The Court: No. You misunderstand the question apparently. The stenographer will repeat the question.

(Question read.)

The Court: In other words, what counsel wants to know is whether the contract was made after the first conversation you had with Dillon or before.

The Witness: After.

1055 Q. Do you know about how long after? A. About two weeks.

Q. Now, do you know whether or not there had been an arrangement made between Local 807 in New York and your employer that they would meet your truck at a certain place when it came into New York? A. They always met about 22nd Street——

The Court: No. The question was not where you met. The question was whether you knew if there was any arrangement as to where you should meet them.

The Witness: Yes.

1056 Q. Did anyone connected with your employer or your employer himself give you directions as to where to meet the members of the union in New York after the contract was signed? A. That is right.

Q. Where did he tell you to meet them? A. Up at 22nd Street at the diner.

Q. A diner at 22nd Street, did you say? A. That is right.

Q. 22nd Street and what? A. That street that follows West Street, right straight.

Q. Eleventh or Twelfth Avenue? A. I don't know what street it is.

The Court: Did you ever hear of the Farm?

The Witness: The Farm?

The Court: Yes.

The Witness: What do you mean?

The Court: Did you ever hear any part of the waterfront along Manhattan on the west side being referred to as The Farm?

The Witness: No.

The Court: Never heard of it?

The Witness: No.

1058

Q. At any rate, were you instructed by your employer to meet the members of the union at 22nd Street? A. Yes, sir.

Q. At a diner? A. Yes, sir.

Q. And do you know whether or not the instructions provided for them, when you reached 22nd Street at this diner, to be there to meet your truck? A. Yes, sir.

Q. And each time when you drove in did you go to the 22nd Street diner with the purpose in mind of meeting members of the union? A. Yes, sir.

Q. And that was always under the direction of your employer, wasn't it? A. We was told when the contract was first drawed up, all us drivers had to do was bring the truck into the city and leave it.

1059

The Court: Leave it where?

The Witness: Leave it at a certain place, and this union was supposed to take the truck and unload it and pick up the load, if there was any, and put it back, and all we would have to do would be to drive it home, but it never worked out that way.

Mr. Murray: I move to strike out the answer.

The Court: Strike it out.

Mr. Marks: I submit it is responsive.

The Court: No. Strike out "it never worked out that way." The rest of the answer stands.

Q. I ask you again, Mr. Witness, whether or not your employer directed you to go to this diner and there meet the members of the union? A. Yes, sir.

Q. Was there any time, if you can recollect, when eight or nine or ten trucks of your employer came to New York for the delivery of merchandise or oil or whatever it might be? A. I don't think so.

1061 Q. Can you estimate on an average how many of your trucks came into New York to make deliveries a day? A. Three and four; sometimes five.

Q. Is it a fact that sometimes the men that met your truck also unloaded another truck belonging to your employer? A. Yes, sir.

Q. And is it a fact that one man, after he got through unloading your truck, would unload a second truck of your employer's? A. Yes, sir.

Q. Did it happen sometimes that the same man unloaded your truck and a second truck, also unloaded a third truck of your employer's? A. They didn't, to the best of my knowledge.

Q. But your recollection is that at least they assisted in the unloading of two trucks? A. Yes.

1062 Q. Now, when you came in, say, for instance, with a load of these drums, did you deliver that load all in one place or did you deliver it in various places? A. Both.

Q. Well, when you delivered it to various places where did you deliver the first part of your load of drums containing oil? A. We would unload in New York City first.

Q. Whereabouts in New York City? A. East River or North River, and then Brooklyn.

Q. If it were the North River, at what pier would you unload? A. We would unload at most all of them.

Q. Along the river? A. Yes, sir.

Q. Before you got into the pier to unload your truck it was first necessary, wasn't it, to get a pass from the gateman? A. Yes, sir.

Q. And you would get into the pier according to the time that you arrived there after other trucks, wouldn't you? A. Yes, sir.

Q. Were there occasions when you had to wait as long as an hour to get into the pier? A. Yes, sir.

Q. Or two hours? A. Yes, sir.

Q. Sometimes three hours? A. Yes. 1064

Q. During that period of time was the member of Local 807 that had met you by direction of your employer at 22nd Street with you? A. Yes, sir.

Q. And did that man help you to unload those drums? A. Yes, sir.

Q. Then, after you had done with that pier on the North River, were there occasions when you went to some other place in New York City to deliver your drums? A. Yes, sir. East River——

Q. Now, just a moment. What time did you ordinarily get in to New York? A. We always——

Q. Just a moment. When you had an arrangement to meet a member of Local 807 at 22nd Street? A. We always managed to get into New York City before the traffic got too heavy. We would leave home early in order to do so. 1065

Q. Well, when would you ordinarily leave home? A. About midnight.

Q. About what time would you ordinarily reach New York after having left your base at midnight? A. About 6 o'clock.

Q. Did it take approximately six hours for your truck to move from New Jersey to New York, to 22nd Street at this diner? A. No, sir.

Q. How many hours? A. About three hours and a half, but we always had stops where we was to lay over and let the tires cool off and the engine cool off.

Q. But, at any rate, the journey with these conditions you spoke of would take between midnight and 6 o'clock in the morning? A. Yes.

Q. And what time ordinarily at the direction of your employer did you pick up the members of the union at 22nd Street? A. That would all depend on where we were going.

Q. Well, suppose you were going to the East River to one of the piers. A. We would pick him up about 7 o'clock.

Q. After you got done with your delivery at the East
1067 River pier, if you only went to one pier, it might be 11 o'clock in the morning before you got out of there, mightn't it? A. Yes, sir.

Q. Sometimes later than eleven? A. Well, very seldom later.

Q. Was it sometimes as late as 12 o'clock? A. Yes. The biggest majority of the load went there.

Q. After leaving your pier where you delivered on the East River on occasions, what was your next stop with these drums of oil? A. That all depends on how the load was going, where it went.

Q. Well, would you give us a typical example, when you had a load of sixty drums of oil where you would ordinarily make deliveries, providing you made more than one. A. It could have been most anywhere.

1068 Q. Well, would you go to the North River? A. A miscellaneous load——

Q. No. We are talking about drums of oil now.

The Court: Counsel is talking now about a case where you may have had as many as sixty drums. That would be a full load, would it not?

The Witness: Yes, sir.

The Court: Now, what he is asking you is to give an illustration, assuming that you had sixty drums and those sixty drums were to be delivered to more than one place, how the delivery would be made? Where would you go first? You can take any particular instance.

The Witness: It was like I was saying; it would all depend on how the load was going.

By the Court.

Q. Well, let us take any one instance that you think of and recall how the load was billed and tell us how you made the delivery. A. If it was a miscellaneous load, we would deliver the North River first. If we had any East River we would deliver that second, and then go to Brooklyn and make the last delivery over there. 1070

Q. Would you call a sixty-drum load a miscellaneous delivery? A. If it had more than one stop.

The Court: All right.

By Mr. Murray.

Q. When you allude to a miscellaneous delivery, you don't mean what is on the truck; you mean that you make more than one delivery at different places; is that what you mean? A. That is right.

Q. Well, where, for instance, would you make deliveries at the North River? A. At any pier. Sometimes we would have two or three piers on the North River. 1071

Q. Now, would the procedure be the same in the North River as to getting into the pier as it was in the East River? A. Yes, sir. You would have to wait your turn. Yes, sir, always.

Q. Then, if you went to Brooklyn, where would you go to Brooklyn to make a delivery? A. We delivered a lot down there at the Army Base down through there.

Q. Now, with these miscellaneous deliveries, after you had left home at 12 o'clock midnight, when would you get back home after you had made these miscellaneous deliveries? A. With a miscellaneous load it was generally the following night before we got back.

Q. That is, if you started at midnight your would get home at midnight twenty-four hours later, is that what you mean? A. It would be that late at times

Q. Was it ever thirty hours? A. No, sir.

1073 Q. Would that mean you had been working continuously for twenty-four hours on these miscellaneous deliveries? A. No, sir, because on the way up we would take a little nap and lay down and rest.

Q. Where would you lay down and rest? A. In the truck.

Q. And would you take a nap in the truck while one of the members of Local 807 took care of the truck? A. No, sir. We always helped them. That is, I did.

The Court: Did you stay with the truck all the time after it arrived in New York?

The Witness: Yes, sir.

Q. Well, now, when members of Local 807 assisted you
1074 in these deliveries, did they stay with you until these miscellaneous deliveries were completed? A. Yes, sir.

Q. Sometimes for twenty-four hours? A. No, sir.

Q. How many hours? A. From the way I understand the contract——

The Court: No, no. Not the way you understand the contract. What counsel wants to know is how long the man who came on your truck after you

arrived in New York City remained with the truck.

The Witness: $9.42 for eight hours.

The Court: No, I didn't ask you that. Strike out the answer. When you arrived in New York, you took some man on the truck from 807, is that right?

The Witness: Yes, sir.

The Court: How long did that man remain on the truck?

The Witness: Eight hours for that money.

The Court: Well, did he remain on the truck any time more than eight hours?

The Witness: No, sir. 1076

The Court: That is what I wanted to find out.

Q. Well, I understood you to tell us that the member of Local 807 stayed with you until the completion of your miscellaneous delivery, is that correct? A. That is correct.

Q. And I understood you to say that that took sometimes a considerable number of hours past eight hours, is that correct? A. Yes, sir.

Q. Well, now, after you made these deliveries, did you sometimes go to the Rockwood Cocoa people to pick up? A. Yes, sir.

Q. Where was that? A. Over in Brooklyn.

Q. And did you sometimes go to the Bronx to pick up scrap iron? A. Yes, sir.

Q. And take it back to New Jersey? A. Yes, sir. 1077

Q. Was Local 807 with you when you did that? A. They wasn't with us while we were picking up the scrap iron.

Q. Well, were they with you while you picked up the cocoa? A. Seldom.

Q. Beg pardon? A. Very seldom.

Q. Were they on occasions? A. What do you mean?

Q. Sometimes? A. Sometimes.

Q. Some time or another? A. Sometimes.

1078 *Benjamin Mattson—For Government—Cross.*

Q. Yes. Well, now, you told the Court and jury yesterday of an incident where you say that Dillon punched you on the chin. Can you fix that date? A. No, I can't.

Q. Can you fix the month? A. No, I don't believe so.

Q. Can you fix the year? A. It was in 1937.

Q. Can you fix the place? A. At Pier 58.

Q. Where is Pier 58? A. North River.

Q. Can you fix the time of the day or night that this incident you claim happened? A. About 3.30 or 4 o'clock in the afternoon.

Q. Was that inside of the pier? A. Outside.

Q. Outside of the pier? A. Yes.

1079 Q. How far was it from the pier? A. I wouldn't say over 50 yards.

Q. Did you make any complaint? A. Yes, sir.

Q. To the police about it? A. Yes.

Q. To whom did you make the complaint? A. It was to an officer.

Q. Where was the officer? A. He was standing just about a block from where the incident happened.

Q. Do you know his shield number? A. No, I don't.

Q. Was Dillon there when you made the complaint? A. Yes, sir.

Q. Did you ask the officer to arrest Dillon? A. I asked him what I could do about it and he told me to get back to Jersey before I got the other side of my chin split open.

Q. Did you consider that good advice?

1080

Mr. Cahill: I will object to that.

Q. Did Dillon go right up to the police officer with you? A. No, sir.

Q. Was he right near the police officer when you held this conversation with him? A. No, sir.

Q. Was he within view of you? A. He was standing at the truck.

Q. Yes. And how far was the truck from the police officer? A. About a block.

Q. Could you see him where he was standing? A. Oh, yes.

Q. Do you know whether or not he was within the line of vision of the police officer? A. Yes, sir.

Q. I believe I asked you whether or not you got the number of that police officer. Did you? A. No, sir.

Q. Now, on the day that you say that Dillon struck you outside of this pier, you had gotten directions, had you not, from your employer to meet some member of Local 807 at the diner at 22nd Street to assist you in your deliveries, hadn't you? A. That is right. 1082

Q. And you knew at that time, did you not, that some member of Local 807 would be waiting there for you to pick him up? A. That is right.

Q. And on this occasion when you say that the incident took place between you and Dillon outside the pier, Pier 50, I think you said——

The Court: 58.

Mr. Murray: 58, thank you.

Q. (Continued) Had an arrangement been made that day to go to 22nd Street and take up a member of the union? A. Yes.

Q. Did you chance to know that members of the union or some member of the union was waiting there in pursuance of the arrangement with your employer to be picked up and go to work? 1083

Mr. Marks: I object to that.

The Court: I will allow it.

A. There was other trucks besides me in that day.

Q. No, I am talking about you particularly. A. We worked on the $9.42 as a split.

Mr. Murray: May I have the answer stricken out as not responsive?

The Court: Strike it out. It is not responsive. The stenographer will repeat the question and the witness will listen carefully to the question before he answers.

(Question referred to read as follows:)

"Q. Did you c nce to know that members of the union or some member of the union was waiting there in pur-
1085 suance of the arr gement with your employer to be picked up and go to work?" A. Yes, I did.

Q. And were your arrangements or instructions to pick up that member of the union at 6 o'clock in the morning of the day of this incident? A. Yes.

Q. And the incident happened at what time? A. Around 3.30, in the afternoon.

Q. Do you happen to know whether or not this particular member of the union waited under instructions to assist you in your deliveries from 6 o'clock in the morning until 3 o'clock in the afternoon that day? A. He didn't have to wait. He caught other trucks. He was not waiting for me particularly because——

Q. I am asking you whether you know that to be a fact.
1086 A. No, I do not.

Q. Did you have some arrangement or some direction to pick up someone from Local 807 the day of this incident about 6 o'clock or 7 in the morning at 22nd Street? A. Yes.

Q. Did you know that the arrangement was that the member of the union would be waiting there to work with you? A. Yes, sir.

Q. But you did not go to 22nd Street? A. No, sir.

Q. Did you expect to get a division of the money that would be paid to the man from Local 807 who worked with you for yourself? A. Yes, sir.

Q. That is what you were trying to do? A. Yes, sir.

Q. Although you knew, did you not, that this contract had been made by your employer with Local 807? A. Yes, sir.

Mr. Murray: That is all.

The Court: Does any other counsel desire to cross-examine this witness?

(No response.)

Redirect examination by Mr. Marks. 1088

Q. Mr. Mattson, on the occasion when Dillon hit you on the jaw, how long after that did you talk to the policeman? A. Why, I left the truck and went right to the policeman.

Q. You went right over to the policeman? A. I went right to him.

Q. About how many feet was the policeman from where you and Dillon were at the time you were struck? A. I would say 100 yards or more.

Q. I didn't hear your answer when Mr. Murray asked you whether Dillon was in the line of vision of the policeman. A. Yes, sir.

Q. He was? A. Yes, sir.

1089

Q. What condition was your face in when you spoke to the policeman? A. I needed a shave, and very dirty.

Q. Was there anything else on it except your beard? A. And bleeding.

Q. What was it bleeding from? A. I don't know what it was bleeding from, but it was sure bleeding.

Q. Was it bleeding from the blow that Dillon struck you?

Mr. Murray: I will object as leading.

The Court: I will sustain the objection, and I will again say to counsel that I think he ought to observe the rule that the witness is here to testify in response to questions and not that counsel is to put the testimony in the mouth of the witness in such form that all the witness has to say is yes or no.

Q. What were you bleeding from, Mr. Mattson? A. I was hit by this Dillon.

By the Court.

1091

Q. Well, when you went up to see the policeman, you were bleeding? A. Yes, sir.

Q. And before you were struck by Dillon was your face bleeding? A. No, sir.

By Mr. Marks.

Q. What did you tell the policeman? A. I asked him what I could do about it.

Q. Did you tell him who had hit you? A. Yes.

Q. Did you point out the man that hit you? A. There was three of them standing together.

The Court: Three policemen?

1092

The Witness: No, there was three—two others besides Dillon.

Q. What did you tell the policeman? A. I just asked him what I could do about it.

Q. Did you tell him what had happened to you? A. Yes, sir.

Q. What did you say? A. I asked him what I could do—

Q. No, what did you say to the policeman had happened to you? A. Well, I told him there was a little union racket there, and the one fellow had struck me, hit me.

Q. And what did he say? A. He told me to get back to Jersey; that is all there was said; and then I went over and called the boss up.

Mr. Murray: Now, if your Honor please, I move to strike out the latter part of his answer.

The Court: "I went over and called the boss up." Strike it out. The jury will disregard it.

Q. Mr. Mattson, after this contract with Local 807 was signed, did it take you more time or less time to make your round trip to New York City and return? 1094

Mr. Murray: I object on the ground that it is immaterial——

The Court: I will sustain the objection.

Mr. Murray: And that it is not proper redirect.

The Court: That is the ground upon which I sustained it.

Mr. Marks: May I be heard on that, your Honor?

The Court: No.

Mr. Marks: If your Honor please, I submit that Mr. Murray went at great length into the question of the hours required and the length of time——

The Court: Now, Mr. Marks, I have been sitting here during all the time that Mr. Murray was examining the witness. You do not need to tell me what he did, because I would have to acknowledge my remissness in my duty if I did not know what he did. 1095

Mr. Marks: I was merely trying to argue, your Honor, that I think that goes to the very essence of proper redirect.

The Court: I said you need not make any effort to be heard on that.

Mr. Marks: All right. That is all.

Mr. Murray: That is all.

(Witness excused.)

The Court: Next witness.

Mr. Marks: I will call Mr. Boyle.

ROBERT E. A. BOYLE, residing at 455 West 23rd Street, Borough of Manhattan, City of New York, called as a
1097 witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Boyle, in 1937, what was your position? A. I was a special agent of the Federal Bureau of Investigation.

Q. And to what office were you attached? A. New York City.

Q. Do you remember an occasion in April, 1937, when you went to the warehouse of Savage & Company? A. I do.

Q. Will you tell us the circumstances, please?

Mr. Murray: May I have the date more definitely fixed?

1098 The Court: Yes, if he can fix it.

Q. Do you remember the precise date? A. I remember now. April 1st, 1937.

Q. Will you please tell us the circumstances? A. Upon receiving instructions to proceed to the Savage Warehouse to make an investigation——

Mr. Murray: Now, I move to strike that out, if your Honor please.

The Court: Strike it out.

A. (Continued) I went there and had a conversation with one Wayne Klink in the presence of one Frank Downs, who identified himself to me as a member of Local 807.

The Court: Just a moment. You had a conversation with whom?

The Witness: With one Wayne Klink.

Q. Mr. Boyle, will you look around this court room, please, and tell us if you see any of those two people here? A. Mr. Downs is over here in the first row, the fourth from the left, wearing the glasses, in the blue sweater. 1100

Mr. Marks: May we have the clerk call the name of Frank Downs?

The Court: Yes.

The Clerk: Frank Downs.

(A man stood up.)

By the Court.

Q. Is the man who now stands in response to the call of the name by the clerk the person you identified as Downs? A. That is correct.

Q. Now, do you see anyone else whom you recognize? A. At that time? 1101

Q. As having seen on that day at that place. You can step down if you can see better, Mr. Boyle. A. (Stepping down from witness stand) No, I do not see any others there.

By Mr. Marks.

Q. Will you tell us the conversation you had with Klink in the presence of Downs? A. I asked him what he wanted.

He told me that Downs, in company with four other men, had come to him while he was backed up to the warehouse there a little bit earlier and told him that he could not unload his load of dressed poultry at the Savage Warehouse unless a Local 807 man was permitted to assist and be paid $9.42. I asked Downs why he had done that, and he said he was a member of Local 807 and that his union's rules and regulations called for his assisting on all these unloadings in New York City, and that his delegates, whose names he said were Campbell, Clarke and Hickey, told him he had a right to do it.

Q. Did you ask Klink where he came from? A. Yes, I
1103 did. He said he had come from St. Louis, Missouri, and he was connected with the Bee-Mac Transportation Company.

Mr. Murray: If your Honor please, I move to strike out that response on the ground that it is hearsay.

Q. Was that in the presence of Downs? A. Yes; all this conversation was.

Mr. Murray: I still object.

The Court: I allow it.

Q. This entire conversation, Mr. Boyle, was in the presence of Downs? A. That is true.

1104 Q. Did you ask Klink whether he was a member of any labor union? A. Not in the presence of Downs.

Q. Did you ask Downs who the four men were that were with him? A. Yes, I did. He said that he knew the name of only one of them.

Q. What name did he tell you? A. He gave the name Robert Dillon.

Q. Did he say who Robert Dillon was? A. He said that Robert Dillon was a union representative.

Q. When you arrived on the scene was anybody else there other than Klink and Downs? A. Those were the only ones I saw near the truck.

Q. Now, Mr. Boyle, do you remember another occasion in April, 1938, when you proceeded to Staten Island? A. Yes, I do.

Q. Do you remember the exact date? A. April 11, 1938.

Q. And will you tell us the circumstances there? A. I went to the Procter & Gamble distribution plant at Port Ivory, Staten Island.

Q. Whom did you see there? A. Where I had a conversation with three men, two of whom gave their names as Morris Reichler and another as Sam Reichler, and who identified themselves by showing their union cards as members of Local 807. 1106

Q. Now, will you look around the court room and tell us if you see Morris Reichler and Sam Reichler here?

Mr. Boudin: I move to strike out the words beginning "by showing their union cards" on the ground that——

The Court: Yes, I will strike that out. The witness may state that they showed him a card, and that is as far as the answer may stand at this time.

Q. Did you look at the cards they showed you? A. I did.

Q. And did the name of any union appear on it? 1107

Mr. Boudin: I object to that.

The Court: Sustained.

Q. Tell us what appeared on the card?

Mr. Boudin: I object to that.

The Court: Sustained.

Q. Did they tell you that they were members of any union?

Mr. Murray: I object on the ground that that has already been answered once.

Mr. Marks: Now, if your Honor please——

The Court: Now, don't argue about the matter, Mr. Marks. You undertook to have him identify somebody. Get back to that and do it, and if you will proceed in an orderly way you will most likely get the information; but you are not going to proceed, as far as I am concerned, in any disorderly manner to do it. Proceed.

1109 Q. Do you see Morris Reichler and Sam Reichler in this court room? A. (Stepping down from witness stand) This is Sam Reichler (indicating) and this is Morris Reichler (indicating).

Mr. Marks: May the clerk call the names?

The Court: Yes.

The Clerk: Will both Reichlers kindly stand?

(Two men stood.)

Mr. Marks: May the record indicate that the same two men stood, in response to the names, that the witness pointed out?

The Court: If that is necessary. The witness was very particular in designating the persons and
1110 indicating the name of each.

Q. Now, did you have a conversation there with the Reichlers? A. I did.

Q. Will you tell us what the conversation there was?

The Court: What was the date of this, Mr. Boyle?

The Witness: April 11, 1938.

Q. Will you give us the conversation, Mr. Boyle? A. I asked Sam Reichler what he was doing there, and he said that he was there to work on trucks brought in by the Hummel Company from Allentown to help unload. I asked if he were employed by Mr. Hummel, and he said he was not, but that as a member of Local 807 he had a right to help in the unloading of these trucks, and that unless he unloaded they would not be able to come in there on the following Wednesday and take a load out there. I then asked him where his brother Morris was, and he said he did not know at the time, but I ascertained that Morris was——

The Court: No. 1112

Mr. Murray: I move to strike it out.

The Court: Yes.

Q. Did you see Morris? A. I saw Morris in a very short time at the plant of Procter & Gamble and had a conversation with Morris Reichler.

Q. Will you give us that conversation? A. I asked him what he was doing there, and he said he was an employee of one Harry Miller, who had a trucking company in Philadelphia, and had trucks coming into the platform. I asked him if he were a regular employee of Harry Miller and he said that he was, and I asked him how that came about, and he said that Harry Miller and Reichler's delegate named Hickey, had a conference at which Reichler was present, at which time Reichler said Hickey told 1113
Miller that unless a Local 807 man was put on Miller's trucks that Miller's trucks would not be permitted to come into New York City in Staten Island to leave or get loads.

Q. Do you remember any further part of the conversation? A. That is the substance of what they told me.

Mr. Marks: That is all, Mr. Boyle.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. How long have you been employed by the Government? A. I was employed from January, 1935, until June, 1938.

Q. Did you sever your connection with the Government in June, 1938? A. That is right.

Q. What is your present occupation? A. Assistant manager of the protection department of R. H. Macy & Company.

Q. You have been there employed by them since, have you? A. That is right.

1115 Q. Now, were you specially assigned to this case? A. Yes, I was.

Q. Were you assigned to go out and gather evidence if you could get it? A. Yes, I was.

Q. Did you go into the Savage Warehouse on April 1st by appointment with anybody? A. No, I did not.

Q. Had you known anyone connected with the operation of the Savage Warehouse before April 1st? A. No, I did not.

Q. Did you have any talk with anyone in the Savage Warehouse before you saw Frank Downs there that morning? A. No, I did not.

Q. Had you had any talk with one Wayne Klink before you saw Frank Downs that morning? A. Not before, no.

Q. Had you ever known Wayne Klink before the morn-
1116 ing of April 1, 1937? A. No, I did not.

Q. Did you go there at the particular direction of some one, or did you go on your own initiative? A. At the particular direction of someone.

Q. And who was that? A. Then agent in charge of the New York office, Mr. Rhea Whitley.

Q. And when you went on April 11, 1938, to the Procter & Gamble place in Staten Island, had you had any conversation with anyone representing the Hummel Company

of Allentown before you went there? A. No, I didn't; not to my memory.

Q. Had you had any correspondence with the Hummel Company of Allentown before you went there? A. No, I had not.

Q. Did you go there on the complaint of the Hummel Company of Allentown? A. No, I did not.

Q. Did you go there on the complaint of anyone connected with Procter & Gamble? A. No, I did not.

Q. When you got there did you see anyone connected with the Harry Miller concern at Philadelphia? A. Not to my memory, no, I did not.

Q. Did you know what the business of the Harry Miller—— 1118

The Court: Excuse me, Mr. Murray. I have just noted we have run five minutes over the time for recess.

Mr. Murray: I was going to say something, your Honor.

The Court: The jury will be excused for a few moments. Persons in the audience will please remain seated until the jury has retired.

(Short recess.)

The Court: All right; bring in the jury.

(The jury returned to the court room.)

Mr. Cahill: May we have the roll called, if your Honor please? 1119

The Court: Yes.

(The roll of the defendants was called.)

The Court: All present. Proceed.

By Mr. Murray.

Q. Now, when you were at Procter & Gamble's on April 11th, 1938, in Staten Island, what time of day were you there? A. About noon.

Q. Did you know that day that one of the Reichlers was driving a truck for Miller? A. No.

Q. Do you know whether or not one of the Reichlers had unloaded about ten tons of merchandise on that day? A. No.

Q. Did you have a talk with Sam Reichler?

Mr. Murray: Stand up, Sam.

(A man stood.)

A. Yes.

Q. Did you ask for his union book? A. No. He showed it to me.

1121

Q. That is, he showed it to you without you asking for it? A. I asked him what he was doing there, and he said he is a member of Local 807, and brought out his union book.

Q. Did you take the book and look at it? A. Yes, I did.

Q. Did you tell him to throw it in the river? A. No, I did not.

Q. Did you tell him to do anything else with it? A. No, I did not.

Q. Did you say anything at all about his union book? A. Not a thing.

Q. Did you tell him the Government would take care of his union book? A. No.

Q. And that he would not have it very long? A. No, I

1122 did not.

Q. And that you would see to it that he would not have it very long? A. No, I did not.

Q. Did you have any conversation substantially along those lines? A. Nowhere near those lines.

Q. Nothing like that at all? A. Nothing like it.

Q. And you are certain of that? A. I am positive.

Q. Did you make any notes of the conversation that you had on April 11, 1938? A. Yes, I did.

Q. Did you make any notes concerning any colloquy you had with him concerning his union card or his union book? A. I made all notes of the conversation at the time. If I said it it would appear in the notes.

Q. Of course, if you told him to throw it in the river you would not put that in your notes, would you? A. Well, I woull not tell him that, so I would not need to put it in my notes.

Q. But if you did tell him that you would not put it in your notes? A. Well, I did not tell him that, so I would not put it in my notes.

1124

Mr. Murray: That is all.

The Court: Do any other counsel desire to cross-examine this witness?

(No response.)

The Court: Any redirect?

Mr. Marks: No.

(Witness excused.)

EDWARD A. STROZYK, residing in Swedesboro, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

1125

Q. What is your occupation, Mr. Strozyk? A. Truck operator.

Q. What is the name of your company? A. Eastern and Southern Transportation Company, Incorporated.

Q. Will you please keep your voice up a little more so we can all hear you? Is that located in Swedesboro? A. That is right.

Q. How long have you been in business? A. We were incorporated about 1934.

Q. About how many pieces of equipment did you operate in 1937? A. Between forty and fifty.

Q. Between what points did you haul merchandise? A. Quite a lot in New York; mostly New York, and we went to Buffalo and various places.

Q. What type of merchandise did you haul? A. Oil and canned goods.

Q. For whom did you haul oil? A. Socony Vacuum Oil.

Q. For whom did you haul canned goods? A. Hurff Canning House.

1127 Q. At the beginning of 1937, in January and February, did your over-the-road drivers unload their trucks in New York City? A. In January and February? I believe they did.

Q. About how long did it take them in January and February, 1937, to make an average round trip from Swedesboro to New York and return? A. There was different ones working on various hours. They worked various hours. Some of them would go out at 4 o'clock in the morning and be here at 8. Some would leave at midnight and take their time coming up and take a nap coming up to cool the motor and tires off. The fellow that came up with that truck would take around ten hours.

Q. Did there come a time in 1937 when your over-the-road drivers stopped loading trucks in New York City? A.

1128 Yes.

Q. About when was that? A. May, I believe.

Q. Did you come to New York City just around that time? A. I did.

Q. Can you tell us approximately when? A. Yes. I believe it was about approximately the 7th; something like that, or the 10th.

Q. That is, the 7th or 10th of May, 1937? A. That is right.

Q. Before that time had you received various telephone calls from New York City? A. I did.

Q. From whom? A. Why, the phone call was from a fellow that was supposed to be Bob Dillon. Of course, I didn't know at the time, but after talking to him later on the telephone I learned that it was.

Q. How long before you came to New York did you talk to Bob Dillon? A. About three hours; two and a half.

Q. That is, the same day? A. That is right.

Q. Did you receive telephone calls from any other persons before you received this call from Bob Dillon? A. Well, my drivers was calling me.

Q. When did your drivers begin to call you? A. This particular day that Dillon called me, they called me. 1130

Q. What was the conversation you had with Dillon that day? A. I couldn't get my trucks unloaded. They wouldn't let them unload.

Q. Tell us as nearly as you can remember what he said to you and what you said to him. A. He said I had to sign a contract or I couldn't get the trucks unloaded, and I tried to get the trucks unloaded every way I knew how, and I gave it up for a bad job.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. What was the conversation?

1131

The Court: Mr. Strozyk, you were not asked what you tried to do yourself. You were asked the conversation that you had with Mr. Dillon over the telephone. Now just tell us what he said to you and what you said to him.

The Witness: I agreed that if he would leave the trucks unload I would immediately be up and sign a contract.

Q. What did he say to you before you said that? A. Well, of course, the trucks were not being unloaded. So we came to that agreement.

Q. Is that what he said? A. That is right.

Q. Did you come to New York that day? A. I did.

Q. Did you see Dillon? A. I did.

Q. Where? A. I believe it was at the Munson Diner.

Q. Do you know where that is? A. I believe it is down on 21st Street. 21st and what, I don't know.

Q. Will you stand up and look around the court room and tell us if you see Dillon here?

1133 The Court: You can step down if you wish.

The Witness: Yes.

Q. Will you point him out, please? You can step down if you wish. A. (Witness leaves stand) Over here in the green shirt.

Q. Well, there are a couple of green shirts.

The Court: Step over, Mr. Strozyk. Step right around there and indicate which one of the defendants you are referring to.

The Witness: Right here (indicating). The second row.

Mr. Marks: May the record show the witness has identified Robert Dillon?

1134 The Court: Yes.

Mr. Marks: All right; take the stand.

(Witness returns to stand.)

Q. Did you have a conversation with Dillon on this day in New York City? A. I did.

Q. Will you tell us what that conversation was? A. Well, it was in regard to signing a contract.

The Court: Well, you are telling us what it was in regard to. What counsel is asking is what the conversation was.

The Witness: Well, it was if I signed the contract I wouldn't have any more trouble.

Q. What did you tell him? A. I told him I would sign a contract.

Q. Was that all that was said? A. Well, I just can't recall word for word what was said.

Q. Well, tell us as best as you can now remember what you said and what he said. A. That is the best I can remember.

1136

Q. You can remember no further part of that conversation? A. No, outside of going up and signing the contract.

Q. Did you say anything about whether you were willing to sign a contract?

Mr. Boudin: I object to that.

The Court: Sustained.

Q. Was there anything said in that conversation about your trucks having been stopped on prior occasions?

Mr. Boudin: Objected to as immaterial.

The Court: I won't sustain it on that ground.

A. It was that——

1137

Mr. Boudin: It calls for a conclusion.

Mr. Murray: Leading and suggestive, if your Honor please.

The Court: Well, I will wait a moment for some further amendment. Read the question.

(Question read.)

The Court: Objection sustained.

By the Court.

Q. Have you now stated all of the conversation that you had with Dillon that you can remember? A. I believe I have.

Mr. Marks: May I not now, your Honor, direct his recollection to specific parts?

Q. Is there anything by which you can refresh your recollection? A. Nothing that I have in mind.

The Court: Is there anything you have to show him that he may examine for the purpose of ascer-
1139 taining whether it refreshes his recollection?

Mr. Marks: No, sir.

The Court: All right. Proceed.

By Mr. Marks.

Q. Was there anything said in that conversation between you and Dillon about whether your trucks had been stopped on prior occasions?

Mr. Boudin: That is the question your Honor sustained the objection to a minute ago.

The Court: I sustained the objection to that.

Mr. Cahill: May I inquire, is it your Honor's
1140 ruling that after the witness has said he has exhausted his recollection as to the conversation that counsel may not direct his attention towards specific subjects?

The Court: Counsel may direct his attention to any specific subject, but not by indicating to him the particular thing that counsel desires to examine him on. Counsel is indicating to the witness what he wants him to say and the witness has said he

dosn't remember any further conversation. If there is anything by which his recollection can be refreshed, that is another matter. This is direct examination.

Mr. Cahill: Yes, if your Honor please, but it has been my understanding heretofore that when you have asked the foundation question, "Is that all the conversation you can recall?" that counsel is then entitled to ask, "Was there anything said in regard to thus and so?"

The Court: I don't recall any such situation as that. There were one or two instances here where I think in one case it was a photograph, and in another case a statement or paper that was shown to a witness and it refreshed his recollection. 1142

Mr. Cahill: Suppose the witness should forget, on the stand, a part of the conversation; isn't it counsel's duty to bring that up?

The Court: I think it is counsel's duty to talk with the witness beforehand and in that way know what the witness' recollection is and guide his questions accordingly. That was always my experience.

Mr. Cahill: That has been done, your Honor.

The Court: Well, I have ruled on this question, Mr. Cahill. Proceed.

By Mr. Marks.

1143

Q. Did you and Dillon go any place after this conversation? A. I don't recall going anywhere else.

Q. What do you mean "anywhere else"? A. Well, I believe we left there.

Q. Where? A. At 807.

Q. Yes. You went from the diner to where? A. Up on Canal Street, union headquarters.

Q. You and he went together? A. That is right.

Q. Whom did you see there? A. I seen a gentleman there that I believe was supposed to be the president.

Q. Speak louder. A. I believe he was the president, but I am not positive.

The Court: Do you recall his name?

The Witness: No, I don't.

Q. Did you have a conversation with that man? A. Well, yes, as far as signing the contract. I was introduced to him.

Q. By whom? A. Bob Dillon.

Q. Tell us what the conversation there was. A. Well,
1145 he told him I was Mr. Strozyk and I had come up to sign a contract.

Mr. Marks: May I have this marked for identification?

(Marked Government's Exhibit 4 for Identification.)

Q. I show you Government's Exhibit 4 for Identification and ask you if you have ever seen that before. A. Yes, I signed it.

Q. Is that your signature that appears on it? A. Yes, sir, it is.

Q. Where and when did you sign it? A. I signed that at Local 807, New York, Canal Street. I believe it was on
1146 the 14th of May.

Mr. Marks: I offer it in evidence.

The Court: One moment. Let me see it.

(Paper handed to Court.)

By the Court.

Q. Did you see anyone else sign it? A. Well, it was signed——

Q. Well, look at it (handing to witness). That may refresh your recollection. A. No, I don't recall. I remember signing my own name to it. I don't recall anyone else signing it, but I am quite sure there was.

Q. Well, did you take that paper away with you? A. Yes, I took the paper away with me and I believe I signed another one for their file.

Q. When you took the paper away with you did you ever take it back there again? A. No.

Q. Do you see any other name on there besides your own? A. Oh, yes.

Q. Was that name on there when you took the paper away? A. It sure was. It hasn't been on since. 1148

Q. Did you see anyone put that name on? A. I don't recall seeing anyone put the name on.

Mr. Murray: Perhaps we can make a concession on that, your Honor.

The Court: All right. Show the paper to counsel.

Mr. Murray: We will concede, if your Honor please, the signature on behalf of Local 807 as William Devery, the president.

The Court: Is there any objection to the offer?

Mr. Murray: No objection.

Mr. Boudin: No.

The Court: Received.

(Government's Exhibit 4 for Identification received in evidence.) 1149

The Court: What is the date?

Mr. Murray: May 14th.

Mr. Marks: May I show it to the jury, your Honor?

The Court: Well, I would suggest that you indicate to them briefly what it is and then pass it around.

Mr. Marks: Yes, sir. This is a form of contract headed "International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Local 807, Truck Drivers Local Union No. 807." It bears the date May 14, 1937. Agreement entered into between Eastern and Southern Transportation Company, party of the first part, and Truck Drivers and Chauffeurs of Local 807, and so forth, and bearing the provisions of the contract. Signed "Eastern and Southern Transportation Company, E. A. Strozyk"; for Local 807, William Devery.

The Court: Is there any particular provision in
1151 the contract that you want to call the attention of the jury to?

Mr. Marks: Not at the present time, your Honor.

By Mr. Marks.

Q. Now, Mr. Strozyk, were you in New York City with any of your trucks before May 14, 1937? A. I was.

Q. Do you remember about how long? A. Less than a week.

Q. Did you accompany your trucks to the city? A. I did.

Q. Where did your trucks unload on that occasion? A. Brooklyn. A pier in Brooklyn.

Q. Do you happen to recall the number of the pier? A. No, I don't, but I have always believed it was 46, but I am
1152 not positive. I don't know a lot about New York.

Q. Did you have more than one truck there? A. Yes. We had three or four; maybe more. I just can't recall.

Q. Will you tell us what happened on that occasion? A. Well, we had them all unloaded but the last one. We had the last one to unload, about twenty cases.

The Court: How many trucks were there?

The Witness: There were at least three or more. About twenty cases were left in the truck. A colored fellow came up and asked us if we believed in unionism.

Mr. Maguire: I object to it and move that it be stricken out.

The Court: Strike it out. A fellow man came up and you had a conversation with him?

The Witness: That is right.

The Court: Strike out what was said.

Q. After you talked with the colored man, did he go away? A. Yes.

1154

Q. What happened after that? A. He came back with about six other fellows.

Q. What were you doing? A. We were unloading the truck.

Q. What were you personally doing? You yourself. A. I was on the ground taking the cases down off the truck and piling them up.

Q. What happened?

Mr. Maguire: I object to that. No identification of these men.

The Court: Well, I don't know what the purpose of the question is. I don't know whether it is intended to call for a statement by somebody or whether it is intended to call for physical things that somebody did. I don't know.

1155

Mr. Boudin: In any event, it would be objectionable, your Honor.

The Court: Perhaps, but I can't see it yet. Proceed.

Q. What happened then, Mr. Strozyk? A. As I said, I was standing at the back of the truck taking the cases off

the truck and putting them in a pile. The next thing I saw was a bunch of stars. I woke up a little later on——

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Did anything strike you?

Mr. Boudin: I object to that.

The Court: I will sustain the objection to that, unless you show, first, the identity of those persons.

Mr. Marks: If your Honor please, may we have a ruling at the present time as to whether there
1157 has been a prima facie showing of a conspiracy?

The Court: No, not on this question. That wouldn't make any difference if there has been.

Mr. Marks: I submit, your Honor, it would make a difference.

The Court: Well, I don't think so.

Mr. Marks: May I be heard for a moment on that?

The Court: No.

Mr. Marks: May I show your Honor a case?

The Court: The primary point before me now is the identification of any one of those persons.

Mr. Marks: May I cite a case to your Honor on that point?

1158 The Court: Yes. Cite all the cases you want to.

Mr. Marks: In the case of International Fur Workers v. United States, in 100 Fed. (2nd), Judge Swan in this circuit, writing for a majority of the court, said that where a conspiracy has been established the evidence of acts of unidentified persons is admissible.

The Court: Well, I will hold right now that you haven't yet to my satisfaction established a conspiracy. So that case goes out.

Mr. Marks: That is why I asked your Honor for a ruling on that question.

By Mr. Marks.

Q. Did any of those men at your truck tell you who they were? A. They said they were City men.

The Court: Is that what they said?

The Witness: Yes, sir.

Q. Was there anything said about a contract?

Mr. Maguire: I object to that. 1160

The Court: Sustained.

Mr. Marks: Now, I am asking these questions, your Honor, in order to get some identification.

The Court: All right.

Mr. Marks: May I pursue that a little further?

The Court: That doesn't do it. Have you ever seen any of these men since?

The Witness: No, I don't believe I have.

The Court: Do you see any of them in the court room now?

The Witness: No, not these particular men.

Mr. Marks: May I attempt to show some connection between these men and the local union?

The Court: That depends on what your question is. Go ahead and try to show it. 1161

Q. Was there anything said by any of these men about a contract?

Mr. Maguire: I object.

The Court: I will allow him to say yes or no.

A. Yes.

Q. Will you tell us what was said about a contract?

Mr. Maguire: I object to that.

The Court: I sustain the objection until it has been shown who the person was who said it.

Q. Was the name of any union mentioned in connection with the contract?

Mr. Maguire: Objection.

The Court: Sustained.

Q. Now, Mr. Strozyk, do you remember another occasion
1163 when you accompanied your trucks to Brooklyn? A. Into Brooklyn?

Q. Yes. A. No, I don't.

Q. I refer specifically to an occasion when there were some automobiles in the vicinity. A. Yes.

Q. Do you remember that occasion? A. That wasn't in Brooklyn.

Q. Where was that? A. That was on West Street.

Q. In New York City? A. That is right.

The Court: Was that before or after the 14th of May, 1937?

The Witness: I don't believe I could recall that.

The Court: Was it before or after you signed the
1164 contract?

The Witness: Before.

The Court: Well, then, it was before the 14th of May.

The Witness: That is right.

The Court: All right. Proceed.

Q. How many of your trucks were there? A. Oh, there must have been eight or ten of them there.

Q. Will you tell us what happened?

Mr. Maguire: Objected to.

The Court: Yes, I will sustain the objection.

Q. Was there any one person whom you know in this court room? A. Yes.

Q. Who? A. Bob Dillon and Tom Sharkey.

Q. Do you see Tom Sharkey in this court room? A. Yes, sir, I do.

Q. Will you point him out, please? A. Right here, the white shirt and blue suit (indicating).

Q. Which row? A. First row.

1166

Q. What position with respect to the right-hand part of the row? A. How is that?

Q. What seat is he from the end? A. Well, I can't see all the seats.

Mr. Murray: I will ask Sharkey to stand up, if your Honor please.

(A man stood up.)

Q. Is that the man? A. Yes.

Mr. Marks: May the record show the witness has identified Thomas Sharkey?

The Court: I think it does.

1167

Q. Were there any other persons present with Dillon and Sharkey on that occasion? A. Yes.

Q. How many? A. Well, there were several. There is only one I can recall I seen, but I don't know his name.

Q. Do you see him in this court room? A. Yes, sir, I do.

Q. Will you point him out, please? A. Yes. He is in the front row.

Q. Which seat? A. With his legs crossed. The red-headed fellow—reddish hair.

Q. How far is he removed from Sharkey? A. One man in between them.

Q. On Sharkey's right or left? A. Right.

Mr. Marks: May the clerk call the name of Abraham Klenofsky?

The Court: Yes.

The Clerk: Abraham Klenofsky, kindly rise.

(A man stood up.)

Mr. Marks: May the record show that the witness has pointed out Abraham Klenofsky?

The Court: It may show that he identifies him. I don't know that he pointed him out. He identi-
1169 fied him.

Q. Did you ever hear the name of Red Klein? A. Yes.

Q. Did you ever hear it applied to the man you just pointed out? A. I did.

Q. And that is Red Klein? A. That is right.

Q. Were there any other persons present aside from Dillon and Sharkey and Klenofsky? A. There was others, but I couldn't recall their names.

Q. How many others? A. I would say there was eight or ten of them there.

Q. Will you tell us what happened there? A. Yes. They wanted to unload our trucks and we didn't want them to unload the trucks.

1170 Q. Tell us what was said by them and by you. A. Well, they told us we had to put City men on the trucks.

Q. Do you remember who did the talking? A. No, I just can't recall. They all had something to say, and we just couldn't see it, putting City men on the trucks.

Q. What did you tell them? A. Well, we didn't know just what to do at that time.

Q. What did you tell them? A. We told them we wouldn't put city men on the trucks; we couldn't afford

it; and we stood there for a while and I went back and looked at a coupe, an automobile, and started taking the license number, and one of them walked up and says to me, "Holler cops."

Mr. Boudin: I object.

By the Court.

Q. What man said that? A. I couldn't recall.

Q. Was it one of the men who was among the eight or ten? A. That is right.

Q. And how many of them were together when he said that? A. They were all grouped together. 1172

Q. How near to one another? A. Oh, right close. They were all grouped together.

By Mr. Marks.

Q. How far was the coupe from your truck?

The Court: Sustained. What is the question?

Q. How far was the coupe from your truck? A. Right back of it.

Q. What did you do then? A. How is that?

Q. What did you do after that? A. Well, I believe we hired some of them to unload the truck——

Q. No, no. We haven't finished with this incident. You said you walked over to a coupe? A. Yes, and started to take the license number. 1173

Q. What happened? A. One of them said, "Holler cops. That won't do you any good."

Q. Did they ask for any money? A. Yes

Q. How much?

Mr. Boudin: Objected to.

The Court: Who asked for it? Can you identify the person?

The Witness: Well, I can identify three of them.

The Court: Who asked for it?

The Witness: Yes.

The Court: All right, who was it?

The Witness: Sharkey, Dillon and this red-headed fellow. They were telling me what the law was, $9.42 to unload.

Q. Did they tell you what local that was? A. Local 807.

Q. What did they say about that? A. Well, they said you couldn't—if you came from over forty miles out of
1175 town you couldn't unload it.

Q. What did you tell them? A. I just can't recall. They wanted me to sign a contract that day. I didn't sign one that day.

Q. Well, about the law: Did you say anything to them about the law?

Mr. Boudin: I object to that as irrelevant, immaterial, incompetent.

The Court: I will allow it.

A. How is that?

Q. Did you say anything to them about the law then? A. No, outside of explaining to them that it was rather
1176 radical, that we couldn't afford to pay it.

Q. Did you pay any of them on that occasion? A. Yes, I did.

Q. How many? A. I don't just recall how many there was we paid.

Q. How long did it take to unload your trucks on that occasion? A. We could generally unload a truck anywhere from thirty minutes to an hour if there was one stop. Once in a while we had domestic. Sometimes that would take

a half day or longer. We very seldom ran into one of them kind of loads.

Q. Just what do you mean by domestic? A. We would go to various piers. We would have a few packages for one pier and a few packages for another pier.

Q. Were most of your loads straight loads, so-called? A. Most of them, yes.

Q. How long did it take to unload your truck on the particular occasion of which we were speaking? A. They all went to the same pier. I don't believe we were in there an hour and a half to unload them all.

Q. How many trucks were there? A. I couldn't just say how many there was. There was at least six or more. 1178

Q. And how many men did you pay? A. I don't recall that.

Q. Did you pay more than $9.42? A. Oh, yes.

Q. How much more? A. I couldn't say how much more; but I know it was more than one, because one man wouldn't unload more than one truck at that time.

Q. Did they tell you that? A. They told me that at that time.

Q. What did you say about that? A. I told them we couldn't afford it. That is about all I did tell them. That is all I could tell them.

Q. Was there more than one man you paid? A. There was a man for each truck.

Q. A man for each truck? And how much did they get each? A. $9.42. 1179

Q. Now, after the contract was signed, who worked for you in New York City? A. Well, when it was first signed Bob Dillon was to be No. 1 man, and we didn't have no specified amount of trucks coming into New York. Sometimes we wouldn't come in at all; sometimes we would have several of them coming in, and he took care of getting more men. So they put more men on the trucks. He

was always there, but there was always a different man helping him. He would pick up different fellows which he called his helpers.

Q. Did you have anybody after Dillon? A. Yes.

Q. Who was that? A. Tom Sharkey.

The Court: You mean he succeeded Dillon or he worked with Dillon?

The Witness: He succeeded Dillon. Dillon got a better job.

Q. How long did Sharkey work with you? A. I couldn't recall just how long it was. It was quite some time.

1181 Q. Who succeeded Sharkey? A. Manuel Magan.

Q. Do you see him in the court room? A. I do.

Q. Will you point him out, please? A. He is sitting next to Sharkey.

Q. On Sharkey's right or left? A. Left.

Mr. Marks: May the record indicate that the witness has pointed out the defendant Manuel Magan?

The Court: Yes.

Q. Now, was there anybody else who worked on your trucks? A. No. At various times there was different ones that would pick us up. They was supposed to be the three head men, the No. 1 men, at different periods.

1182 Q. Which ones picked you up? Do you know any names? A. No, I don't.

Mr. Marks: May I have these marked for identification as one exhibit?

The Court: How many are there?

Mr. Marks: Two checks.

(Marked Government's Exhibits 5-A and 5-B for Identification.)

Q. I show you Government's Exhibits 5-A and 5-B for Identification and ask you if you have ever seen those before? A. I have.

Q. Do you recognize the signatures on them? A. I do.

Q. Are they yours? A. No, they are not.

Q. Whose signatures are they? A. The secretary and treasurer of the corporation.

Q. Of your corporation? A. That is right.

Mr. Marks: I offer them in evidence.

Mr. Maguire: Objected to as incompetent, irrelevant and immaterial.

The Court: Let me see them. 1184

(Handed to Court.)

The Court: I will sustain the objection until you establish to whom these checks were given.

Q. You testified that you met Dillon the day you signed the contract? A. I did.

Q. How many trucks did you have in New York that day? A. Six or more.

Q. Who unloaded those trucks? A. Oh, some of these men that was there, and I believe Dillon was one of them. I just met these men outside and it would be hard to remember that particular day, just who they were, but Dillon was one of them, because he was the one I talked to.

Q. Did you pay any money to him that day? A. Yes, I did. 1185

Q. Do you remember how you paid it? By cash or check? A. I paid some money by cash and some money by check. I didn't have enough cash.

Mr. Marks: I renew my offer at the present time.

The Court: No. You haven't asked him the question yet that I suggested.

Q. Did you pay any money to Dillon on that day?

The Court: Well, he may not call anything money except that issued by the Government.

Q. Did you make out a check or have anyone in your company make out a check for Dillon that day? A. I believe I did.

Q. Are those the checks, Government's Exhibits 5-A and 5-B for Identification? A. Yes, they are the checks.

The Court: Did you give those to anybody?

The Witness: I gave them to Bob Dillon?

1187 The Court: Objection overruled.

(Government's Exhibits 5-A and 5-B for Identification received in evidence.)

Mr. Marks: May we have these marked for identification as one exhibit?

The Court: Yes. The clerk will mark them 6.

(Marked Government's Exhibits 6-A to 6-F, inclusive, for Identification.)

Q. Now I show you Government's Exhibit 6-A for Identification and ask you if you have seen that before? A. I must have seen it. I wrote it out. I don't recall seeing it, but that is my handwriting.

1188 Q. You recognize the handwriting on it? A. That is right.

Q. To whom did you give that? A. Tom Sharkey.

The Court: Which one is that?

Mr. Marks: 6-A. I offer in evidence Government's Exhibit 6-A for Identification.

The Court: Where are the two checks which were received as 5? Show them to the jury.

Mr. Murray: Your Honor, I observe that the dates on these checks indicate that they were paid after the signing of the contract.

The Court: Well, I can't change that.

Mr. Murray: And I therefore object.

The Court: Objection overruled.

Mr. Murray: Exception.

(Government's Exhibit 6-A for Identification received in evidence.)

Mr. Marks: Show that to the jury, your Honor?

The Court: Yes.

1190

Q. Now I show you Government's Exhibits 6-B, 6-C, 6-D, 6-E and 6-F, all for Identification, and ask you if you recognize each of those? A. I couldn't say I do.

Q. Do you recognize the signatures on them? A. I do.

Q. On each of them? A. I do.

Q. Now, do you know to whom you gave each of those checks? A. No. The drivers mostly had them checks to pay the union men.

Q. Those checks were issued by your company? A. That is right.

Q. To whose order? A. To whose order?

Q. Yes.

The Court: Well, one moment. The checks speak for themselves.

1191

Mr. Boudin: The checks speak for themselves.

Mr. Marks: 100 Federal (2d).

The Court: I thought it was 102. All right. Proceed.

Cross-examination by Mr. Murray.

Q. Now, Mr. Strozyk, was your concern known as the Eastern & Southern Transportation Company? A. That is right.

Q. Beg your pardon? A. That is right.

Q. And how long did it have that name? A. I believe it was incorporated at 1934.

Q. Did it have some other name before 1934? A. It was the Eastern & Southern Transportation Company.

Q. I beg your pardon? A. Before that it was the Eastern & Southern Transportation Company.

1193 Q. And in 1937 what name did it have? A. Eastern-Southern Transportation, Inc.

Q. And at this time what time has it got? A. Eastern & Southern Transportation Company, Inc.

Q. Now, is your wife an official in that corporation? A. Yes, she is.

Q. What job does she hold? A. I believe she is the president.

Q. You testified here this morning, if I remember correctly, that on one occasion when you were in New York, I think before May 14th, it only took an hour or an hour and a half to unload one of your trucks? A. That was if it was a one-stop load, yes, sir.

Q. Well, you told the jury of a particular instance, did you not, where it only took about an hour and a half to

1194 unload your truck on the pier? A. One truck?

Q. Yes. A. It didn't take that long.

Q. Well, how long did it take to unload one truck? A. It took anywhere from a half an hour to an hour.

Q. Do you know Benjamin Mattson? A. Yes, sir, I do.

Q. How long did he work for you? A. I couldn't say offhand. Quite considerable; a few years.

Q. Now, on occasions you rode in, you stated, from New Jersey to New York with one of your trucks? A. That is right.

Q. Did you ever ride in with this last witness before you, the witness who finished his testimony this morning, Benjamin Mattson? A. Why, up until I tried——

The Court: No, no. Just answer the question.

A. (Continuing) I don't believe I did.

Q. Were you aware of the fact that on occasions Mattson's deliveries on your truck took from midnight one night till midnight the next? A. I don't recall.

Mr. Marks: I object to that on the ground there is no such testimony.

Mr. Murray: I submit, if your Honor pleases, 1196
that there is.

Mr. Marks: Not about deliveries.

Mr. Marks: I offer them in evidence.

Mr. Maguire: I object to it as incompetent, irrelevant and immaterial.

The Court: Let me see them.

(Handed to the Court.)

The Court: Objection sustained.

Q. Mr. Strozyk, going back for a moment to the occasion when you had your trucks at Pier 46 in Brooklyn, do you remember that occasion? A. I do.

Q. How many men approached your trucks? A. A half dozen at least. 1197

Q. Did you ask them who they were? A. I did.

Q. And who did they say they were?

Mr. Maguire: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Did you ever see any of those persons again at any other place?

The Witness: I don't recall ever seeing them again.

Q. Was anything said about a contract?

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Marks: I submit, your Honor, that now that we have had the evidence about the contract and offered the contract in evidence, that the prior testimony as to this transaction and conversation with these men is now admissible.

The Court: I have ruled.

Q. Mr. Strozyk, after the contract was signed how long
1199 did it take your drivers to make an average round trip to New York City and return?

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Marks: That is all.

The Court: Well, we will suspend now. It is a few minutes to one. We will reconvene at 2 o'clock sharp. The jury may retire.

(Recess to 2 P. M.)

AFTERNOON SESSION—2 P. M.

1266 EDWARD A. STROZYK resumed the stand and further testified as follows:

Mr. Maguire: Your Honor, may we approach the bench?

The Court: Yes, sir.

(Conference between Court and counsel at the bench, not within the hearing of the jury.)

The Court: Mr. Marks, you have cited a case to me, 102 Fed. (2d)

The Court: It doesn't make any difference. Overruled. If there is not, he couldn't be aware of it.

Mr. Marks: Well, it is a misleading question, your Honor, in view of the evidence.

Mr. Murray: I submit, if your Honor please——

The Court: Proceed, gentlemen.

Q. (Read.) A. Are you figuring over the road or delivering and loading the truck? I am talking about unloading the truck.

Q. I am talking now about the time it takes when a truck leaves your place in New Jersey for the delivery 1202
of certain loads in New York up to the time that it returns to your place in New Jersey after the deliveries have been made and the pickups have been taken in New York. A. I am aware of the fact that there were several times he left midnight and several times in the afternoon. That was their privilege.

The Court: No. The question is if he left at midnight, whether you were aware of the fact that it was up to midnight of the next night before he got back. Were there any such occasions as that that you are aware of?

The Witness: Not continuously going, no, sir.

The Court: Was there ever one?

The Witness: If he had trouble with the truck, 1203
there may have been. I can't recall one.

Q. Would you say that length of time for his work would only ensue if he had trouble with his truck? A. Not necessarily, no, sir.

Q. What do you mean? A. Why, most of our men leave in Swedesboro and they done a lot of laying over to homes and various places on the road.

Q. Did you have truck drivers that worked continuously for eighteen hours in the operation of the truck and the delivery of its merchandise and the pickup of other merchandise? A. Not continuously working, no, sir.

Q. What would you say would be the highest average that any truck driver continuously worked on the truck? A. Well, the most it would take to unload the truck would be around a half a day. That is if you run into a lot of difficulty, and it takes about eight hours to come into New York and go back.

Q. You mean half a day plus the eight hours? A. That is right. That is if he is having difficulty.

1205 Q. That would make how many hours? A. Well, that would be twelve hours.

Q. In 1936 did your men belong to a union? A. I believe they did. That is, not all of them; some of them.

Q. Well, take Mattson; did he belong to a union in 1936? A. I couldn't say for sure, but I don't recall him ever belonging to the union.

Q. Do you recall that after 1936 he belonged to a union? A. No, I don't.

Q. And in 1937? A. I don't recall him ever belonging to a union.

Q. Were you his employer in 1937? A. That I couldn't say. He has been on with me, off and on, several times.

Q. Well, was he with you in 1936? A. I believe he was.

Q. And in 1937? A. I am not sure.

1206 Q. Was he with you in the early part of 1938, say up to June 1st? A. I am not sure of that.

Q. Well, at least did you arrange for him to become a member of the union in New Jersey?

Mr. Marks: Objected to as not within the scope of the direct.

The Court: Overruled.

Q. (Read.) A. That was their privilege.

The Court: No, that is not the question. The question was not what their privilege was. The question was what you did or didn't do.

The Witness: You mean did I demand him to belong to a union?

By the Court.

Q. Do you know what the word "arrange" means? A. No, I don't recall it.

Q. Do you know what it means to arrange anything? A. Yes, sir, I do. 1208

Q. The question is whether you arranged for him to become a member of a union. A. Not that I can recall.

By Mr. Murray.

Q. And did you pay his monthly dues either in 1936 or 1937 or the early part of 1938 to any union in the State of New Jersey?

Mr. Marks: I object to that as not within the scope of the examination.

The Court: Overruled.

A. I would have to bring a mess of books up here to tell you that. 1209

Q. What is your recollection? A. I can't recall it.

Q. Let me see if I can help you. Did you deduct a certain sum from his pay each month as dues for the union which you paid to the union? A. I did some of the men. I couldn't recall whether it was him.

Q. How many men did you do that for? A. I couldn't recall that.

Q. Can you give us any estimate? A. No, I don't believe I could.

Q. Well, did you do that in 1937? A. Yes, I believe I did.

Q. Did you do it in the early part of 1938 up to June 1st of 1938? A. We are still paying it.

Q. Well, by that do you mean that you pay the dues? A. No, we don't pay the dues. These men, when a union man comes in it is not quite as handy as it is in New York to go around and pay your union dues. Our local is twenty-eight miles from Swedesboro, and he comes down about every four Saturdays and the money is left there to
1211 pay the union dues.

Q. Who leaves the money? A. Why, I deduct it from the men if they give me the privilege.

Q. Do you say that in all instances of men that belong to the union they live twenty-eight miles from Swedesboro? A. What is that?

Q. (Read.) A. I don't know what you mean by twenty-eight miles from Swedesboro.

Q. You say the union headquarters is twenty-eight miles from Swedesboro? A. That is right.

Q. And that is the reason you pay the dues instead of the men? A. That is right.

Q. Because it is inconvenient for them to travel that distance to union headquarters? A. That is correct.

Q. Now, you know what twenty-eight miles from Swedes-
1212 boro means. A. That is twenty-eight miles.

Q. Is that why you pay the union dues? A. Because it was not convenient for the men to pay the dues. The businessman of the union was not there as often as he might have been if he was into town. He had no office there. When he came around, whoever left the money there, why, I gave it to him.

Q. That is how it happened? A. That is just how it happened.

Q. When you signed your contract with Local 807 in New York did you sign it with the understanding that your employees were members of the union in New Jersey? A. I don't recall that ever being brung up.

Q. Do you recall whether you were asked whether your men were members of any union in the State of New Jersey or elsewhere? A. No, I do not.

Q. Was there anything said when you signed this contract with Local 807 on May 14, 1937, as to whether or not you paid your employees the union scale of wages? A. No, sir, that wasn't brought up.

Q. Nothing was said about it at all? A. No, sir.

Q. Now, you testified that about a week before May 1214
14th, that you met a defendant, Dillon, and others in New York, is that right? A. How is that?

Mr. Murray: Will you read the question, please?

Q. (Read.) A. If I did, I made a mistake. It was on the 14th.

Q. I beg your pardon? A. It was on the 14th.

Q. Well, when did you sign your contract? A. On the 14th.

Q. Did you meet Dillon before the 14th? A. No, sir.

Q. Did you meet anyone else connected with this union before the 14th? A. Plenty of them.

Q. Well, whom did you meet particularly? A. Well, I 1215
can't recall any of their names. They were a different crew most every time I saw them.

Q. Do you see anyone sitting here in this court room among the defendants that you met before May 14th? A. No, I don't.

Q. Is it your understanding that, having met Dillon on May 14th, that on the same day you signed the contract with the union? A. That is my understanding.

Q. That is what happened, is it? A. That is right.

Q. Where did you meet Dillon on the 14th? A. At the Munson Diner.

Q. And then did you go from that diner right down to the union and then did you sign a contract? A. That is right.

Q. Government's Exhibit 4, is that correct? A. That is correct.

Q. Did you go down with Dillon personally? A. Yes.

Q. Did he ask you to come? A. Why, yes. I had an appointment with him.

Q. When did you make the appointment? A. About two
1217 and a half hours previous to that.

Q. And then did you go down unaccompanied by Dillon? A. No, I was with him.

Q. Did he meet you and go to the union rooms? A. That is correct.

Q. Did you see Mr. Devery, the president of Local 807, there? A. I don't remember just who I saw there. There was somebody in authority there.

Q. Did you have any conversation with the man in authority? A. No, I don't believe I did.

Q. Did he tell you that you would have to sign a contract? A. I understood that before I went there.

Q. I am asking you if he told you, the man in authority, that you would have to sign a contract? A. I can't re-
1218 member.

Q. Was there anything said by the man in authority as to whether or not you were free to sign or not to sign a contract? A. I don't believe there was.

Q. Did you ask the man in authority whether or not you had to sign a contract? A. No, I didn't ask him.

Q. Well, now, the contract as I understand it, went into effect between you and the union on May 11, 1937, is that correct? A. I believe it was the 14th.

Q. The 14th, rather. Pardon me. Thanks for the correction. Then did you make an arrangement with anyone in the union that as your trucks came to New York, that anyone representing the union would meet them at 22nd Street? A. I believe it was 21st Street, the Munson Diner.

Q. Or 21st Street? A. I believe it was. It was the Munson Diner.

Q. Did you make that arrangement? A. Yes.

Q. And did you make an arrangement with the union that if the truck got in there at 6 or 7 o'clock in the morning, that there would be work for some members of the union to help in the unloading and the conduct of that truck? A. I didn't make any arrangements like that. 1220

Q. Well, did you make any arrangements as to whether or not the members of the union were to meet the truck at 21st Street at any given hour when it arrived there from New Jersey? A. Well, we were told that that is where they would come with the trucks when we came in.

Q. Did you agree to that? A. Why, I don't believe I did.

Q. Did you tell Mattson, one of your drivers, to go to 21st or 22nd Street when he arrived in New York to meet members of the union? A. I told him to use their own judgment when they got to New York.

Q. You didn't tell him to go to 21st Street? A. No.

Q. Or 22nd Street? A. No.

Q. You gave him no directions at all to pick up any members of the union? A. I can't recall. 1221

Q. Is Mattson still working for you? A. Yes, sir.

Q. Were you in the court room when he testified here this morning under cross-examination? A. No, I was not.

Q. Now, did you, after having signed this contract of May 14th with Local 807, have any understanding with the drivers of your trucks who came to New York that if they were not assisted by members of Local 807, that you would give him half of 89.42? A. That is correct.

Q. That arrangement was made? A. It was.

Q. And did you carry out that arrangement with the drivers of your trucks on certain instances? A. I did.

Q. That you, of course, understood was in violation of the terms of the contract that you had signed with Local 807, wasn't it? A. I did—I do.

Q. After this contract was signed and after Dillon had no further contact with your trucking concern, did you go to the homes of any of these defendants and ask them to go to work for you? A. Did I?

Mr. Marks: I object to that as asking two questions in one.

1223

The Court: Yes, I think myself that you better divide your question.

Mr. Murray: All right, your Honor.

Q. Do you know Manuel Magan? A. I do.

Mr. Murray: Stand up, Mr. Magan.

(A man stood up.)

Q. That is Manuel Magan. Did you go to his home? A. Yes, sir.

Q. When? A. I don't recall just when.

Q. Was it after May 14, 1937, the date of the signing of the contract with Local 807? A. Yes, sir.

1224 Q. Do you know how long after that it was? A. No, I don't.

Q. Where was Magan's home? A. I don't know what street it was on. It was right below Canal Street. I know that. I think it is the street the elevated is on.

Q. But it is a fact that you went to his home? A. That is right.

Q. Voluntarily and without suggestion from anybody? A. I couldn't say just why I was there.

Q. Are you able to tell the jury how it came that you went to Magan's home? A. No, I am not.

Q. Well, when you got to Magan's home did you have a talk with him? A. Yes.

Q. Did you ask him to go to work for you? A. I believe he was working for me then.

Q. Did you ask him to go to work for you? A. I couldn't say.

Q. Do you know Tony Venditti? A. Who?

Q. Tony Venditti.

Mr. Murray: Will you stand up, Mr. Venditti? (A man stood up.) 1226

Q. Do you see this gentleman? A. I don't recall him, no, sir.

Q. Did you ever ask him to go to work for you? A. I don't recall asking him to go to work for me.

Q. Do you know whether or not he ever did work for you? A. Not to the best of my knowledge, no.

Q. And you do remember that Magan did? A. I do.

Q. On occasions after the men of Local 807 had worked for you were there times when you gave them checks that were worthless in payment for their services? A. How is that?

Q. (Read.)

Mr. Marks: I object to the question as indefinite and calling for a conclusion. 1227

The Court: Overruled.

A. I believe there was on one occasion.

Q. On only one occasion? A. As far as I can recollect.

Q. Did you give him checks if there were no funds in the bank? A. There were funds in the bank, but they

had to keep the funds in the bank—checks for three days before they could draw on them.

Q. Well, do you know on how many occasions you gave these checks that were dishonored? A. I remember one.

Q. Do you know of any occasions that you gave checks and the recipients of the worthless checks went to your place in New Jersey to get paid? A. How is that?

Q. (Read.) A. No, sir, I do not.

Mr. Murray: May I mark this for identification?

(Marked Defendants' Exhibit A for Identification.)

1229

The Court: Members of the jury, so that you will be better able to follow the exhibits which have been and may hereafter be received in evidence, those that are offered by the Government will be indicated by numerals, 1, 2, 3 and so on. Those of the defendants will be indicated by letters of the alphabet.

Q. I show you this piece of paper and ask you if you ever saw it before. A. I don't recall seeing it before. It is one of our checks.

Q. Do you have anything to do with your bank account? Do you personally? Over in Matawan, New Jersey? A. How is that?

Q. Have you got anything personally to do with your
1230 bank account of the Eastern and Southern Transportation Company, Inc.? A. Yes, I have somewhat to do with it.

Q. Do you recognize this piece of paper? A. No, I don't. I recognize it as being our check.

The Court: You mean by that that the signatures are of persons who were authorized to sign checks for the company?

The Witness: Yes, sir.

Mr. Cahill: May we not see an exhibit that has been handed to the witness, your Honor?

The Court: Not unless he offers it.

Mr. Cahill: Even though it has been given to the witness?

The Court: Yes.

Mr. Cahill: There may be redirect examination and we would be entitled to have it.

The Court: You may bring it up when the time for redirect examination comes. He has the right to choose his own time within his own examination as to when and if he will offer the paper in evidence.

Mr. Murray: That is all.

1232

Mr. Cahill: We now ask that the check be shown to us that was shown to the witness.

The Court: Yes.

Mr. Murray: Your Honor, I have no objection at all to giving the check to the United States Attorney.

The Court: Well, give it to him.

Mr. Murray: But I understood the rule of law to be that an exhibit that is offered for identification and not offered in evidence, your opponent has no right to it.

The Court: Either has a right to examine any document marked for identification if after the document is marked for identification it is shown to the witness and any questions are asked about it. When you mark a paper for identification and make no further use of it, your opponent has no right to it; but if you make any use of it and exhibit it to the witness and ask any questions about it, he may then look at the paper to see whether he wants to conduct any examination on it or not.

1233

1234 *Edward A. Strozyk—For Government—Cross.*

Cross-examination by Mr. Maguire.

Q. Do you keep a time clock at your place of business in Swedesboro? A. No, sir.

Q. Prior to May 14, 1937, did you have a time clock at your place of business? A. No, sir.

Q. Now, it is a fact, is it not, that in the period 1936 and up to May 14, 1937, it was required that drivers operating in New Jersey should make out cards showing their hours of service?

Mr. Marks: I object to that as irrelevant and immaterial.

1235

The Court: I sustain the objection. You can't prove what the law is by this witness, and the Court, anyway, will take judicial notice of what the law is in New Jersey, but you can ask him what his knowledge is of the existence of a condition.

Q. In 1936 did your drivers keep time records showing the service, hours of service?

Mr. Marks: I object to it as irrelevant and immaterial.

The Court: I will allow it.

Mr. Marks: Not within the scope of the direct.

1236

Q. Did they? A. Did they?

Q. Yes. A. I couldn't answer that question.

Q. Did you require— A. How is that?

Q. Did you require them in 1936 to submit to you records showing their times of service? A. I couldn't answer that question by saying yes or no.

Q. Did you instruct them, any one of your drivers, in 1936 to keep a card showing their hours of service and turn it in to you? A. I couldn't say.

Q. You mean that you don't remember? A. I remember a lot about it, but to say yes or no I can't answer that question.

Q. In 1936 did any of your drivers turn in to you cards purporting to show the record of service, hours of employment? A. I don't know.

Q. Did they? A. I don't know.

Q. You mean by that that you don't remember? A. Yes, I remember.

Q. Was there at any time in 1937 up to May 14th turned over to you or to your office by any one of the drivers employed by you a card purporting to show the hours of service? A. I couldn't say what year. 1238

Q. Well, when you say "you couldn't say what year," do you recall any year between 1935 and the present time where cards or records of service have been turned over to you? A. Yes, sir.

Q. Now, as a matter of fact, in the past year certain cards have been required by the Interstate Commerce Commission, have they not?

Mr. Marks: I object to that as improper.
The Court: Sustained.

Q. Can you tell us approximately how many years ago it was that the drivers turned over cards or records purporting to show their hours of service? A. I would say it was two to three years ago. 1239

Q. Can you place the time with reference to May 14, 1937? Was it prior to May 14 or subsequent to that? A. I couldn't say.

Q. At any event, two or three years ago some such card or record was turned over by some drivers to you, is that correct? A. How long ago?

Q. Some two or three years ago. A. Yes.

Q. Are those cards in your possession or in the possession of your company? A. I believe they are in the possession of the company.

Q. At Swedesboro? A. Yes.

Q. Can you produce those? A. I believe I can.

Mr. Maguire: If your Honor please, I ask leave to suspend further examination of this witness and I ask that he produce those cards. I think the matter goes directly to his credibility.

Mr. Marks: I would object to any question along those lines, your Honor, on the ground that it is irrelevant and immaterial to these issues.

1241

The Court: I couldn't very well tell what the materiality was until I saw the cards when they are produced. I will allow you to suspend the examination of this witness.

When can you produce the cards?

The Witness: I suppose I can produce them tomorrow, but there is something—there is a question I would like to know about these cards. I may misunderstand this question that this gentleman gives me.

The Court: Well, I think we can adjust that when you are not on the witness stand, if there is any question about it.

Mr. Cahill: On the point of materiality, your Honor, I think when we were arguing this point the other day your Honor agreed with me that there is no question here of an attempt by this Local 807 to better conditions. In fact, the proof shows the contrary, because they wouldn't let out-of-town drivers into their local. I can't see how this line of examination is material to the issues before us.

1242

The Court: Well, it may be and it may not be. I am not deciding that question now. I don't know

what the cards will show. I will grant a suspension of the cross-examination of this witness until tomorrow if he feels that will be sufficient time to enable him to locate and bring the cards here.

Mr. Maguire: Thank you, sir.

The Court: What time tomorrow would you prefer? In the morning or afternoon?

The Witness: I would prefer it in the afternoon.

The Court: 2 o'clock. Anything further from this witness?

Redirect examination by Mr. Marks.

1244 Q. Mr. Strozyk, will you tell us whether or not you signed this contract with Local 807 of your own free will?

Mr. Maguire: I object to that.

The Court: I will sustain the objection to that.

Mr. Marks: If your Honor please, on cross-examination counsel went into the breach of this contract by this witness.

The Court: Yes.

Mr. Marks: I submit that by way of redirect we should be able to show whether there was any contractual relationship.

The Court: No. The contract is here and the facts are here.

1245 Mr. Marks: Well, it is something——

The Court: If there are any facts you want to bring out, you may do so, but you are asking this witness to express a legal opinion.

Mr. Marks: No. I am asking him to express his state of mind at the time he entered into the contract.

The Court: I will not permit the question in that form.

Mr. Cahill: Judge, we don't want to press on any particular form here, but isn't this man's state of mind a fact just as much as any other fact in evidence?

The Court: It is.

Mr. Cahill: If your Honor disagrees with us as to the form of the question, we don't wish to stick on form. We wish merely to elicit the facts.

The Court: All right. I suppose you are eliciting the facts. I am sustaining the objection to that form of question.

1247 *By Mr. Marks.*

Q. In your conversation with Dillon on May 14, 1937, what was said about the contract?

Mr. Boudin: I object.

The Court: I will allow it.

Mr. Boudin: Exception.

A. That was supposed to give us the privilege of unloading trucks in New York.

Mr. Maguire: I move to strike it out as not responsive.

The Court: I will allow it.

1248

Q. Is that what he said?

Mr. Maguire: Exception.

Q. Is that what Dillon told you? A. Yes. That was the reason of the contract, so we could get our trucks unloaded.

Q. What did he say—I withdraw it.

Mr. Maguire: May I move to strike that out as not responsive?

The Court: You mean the statement of Mr. Marks or——

Mr. Maguire: The testimony of Mr. Marks as well as that of the witness.

The Court: No.

Mr. Marks: Any objection to my testimony should come at the time the question is asked.

The Court: Motion denied.

Q. What did you say to Dillon when he told you that? A. Well, I signed the contract. I said I would sign the contract. 1250

Q. Was there any further discussion along those lines? A. Not that I recall.

Q. In the telephone conversation that you had with Dillon some two or three hours before what was said about the contract? A. Well, if I came up and signed the contract I could get my trucks unloaded.

Q. Dillon said that? A. That is right.

Q. What else did he say? A. Well, we made arrangements to have the trucks unloaded while I was coming into New York. So that I could immediately come to New York and sign a contract. That is all I can recall.

Q. Did you sign the contract because of Dillon's statement to you about the unloading of your trucks? 1251

Mr. Maguire: I object to it.

The Court: I will allow that.

Mr. Maguire: Exception.

A. How is that?

Q. (Read.) A. Well, on account of not being able to unload the trucks, to get them unloaded. He and several others' statements.

Mr. Maguire: I move to strike out the latter part.

The Court: Strike out the latter part as not responsive.

Mr. Murray: Do you care to question about the check?

Mr. Cahill: No.

Mr. Murray: I offer it in evidence.

The Court: Is there objection?

Mr. Cahill: Well, until there is some materiality or relevancy shown. We have had nothing about this check whatsoever.

1253 The Court: I haven't seen it. I don't know what it is.

Mr. Cahill: Nor do we.

(Check handed to Court.)

The Court: Objection sustained.

Mr. Murray: That is all.

By the Court.

Q. Just a moment. Do I understand from your testimony that when you signed the contract on May 14, 1937, it was your understanding that that gave you the privilege to have representatives of the union or Dillon and those associated with him unload the trucks? A. That is right.

Q. And that was a privilege, as you stated it? You so

1254 understood? A. Well, it wasn't a privilege; it was compulsory.

Q. In other words, you didn't think, did you, when you signed the contract that it remained for you to say whether you would have the trucks unloaded or not? A. No, I didn't.

Q. Or did you understand that the trucks that came in would go to 21st Street and there a City man would be taken on to unload them? A. Yes, that is it.

Q. That is the way you understood it? A. Yes.

By Mr. Marks.

Q. Did you understand when you signed the contract, Mr. Strozyk, whether you would or would not be able to unload them without having signed the contract?

Mr. Murray: I object, if your Honor please.

The Court: I will allow him to answer that in view of the questions I put.

A. I wasn't allowed to unload without them.

Q. May we have that answer again? A. I wasn't allowed to unload without them. 1256

Q. That was your understanding at the time you signed? A. In fact, I knew it.

Mr. Marks: That is all.

(Witness excused.)

PAUL ELLSWORTH KOONTZ, residing in Aspers, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Now, Mr. Koontz, I want you to keep your voice up, if you will, so this last gentleman in the jury box can hear everything you say. Where are you employed? A. H. Earl Pitzer, Biglerville, Pennsylvania. 1257

Q. Where is Biglerville, Pennsylvania? A. Near Gettysburg.

Q. About how far from New York City? A. 210 miles, approximately.

Q. How long have you been employed by H. Pitzer? A. Approximately six years.

Q. In what capacity? A. Well, as a chauffeur, truck driver, all the while.

Q. Between what points did you drive in 1937 and up to June 1, 1938? A. Between Biglerville and New York.

Q. About how often did you come into New York City in that period? A. Approximately three times a week.

Q. In the very early part of 1937, that is, January and February, did you unload the truck yourself in New York City? A. Yes.

Q. Did there come a time in 1937 when you stopped
1259 unloading the truck yourself? A. Yes, sir.

Q. About when was that? A. I would say early summer.

Q. Could you give us the month? A. June, approximately; June or July.

Q. How did you come into New York? A. I came into New York by way of the tunnel.

Q. The Holland Tunnel? A. Holland Tunnel.

Q. Will you tell us what happened around June or July, 1937, as you entered the city by the Holland Tunnel? A. Well, sometimes when we were driving into the city there would be a man approach the truck at the tunnel.

Q. Would what? A. Approach the truck as we came out of the tunnel.

Q. How fast would you be driving the truck as you
1260 left the tunnel? A. Very slowly.

Q. Isn't there an upgrade there? A. Yes.

Q. Is there a traffic light? A. Not just as you come out—there is a traffic light, yes, right there.

Q. What happened as you came out?

Mr. Maguire: I object to any generalities.

The Court: I will allow it.

Mr. Maguire: Exception.

Q. Sometimes there would be a man approach the truck as you came out. He would say you had to put on a City man.

Mr. Maguire: I move that it be stricken out unless someone is identified.

The Court: I am going to allow it to stand until I see whether they identify somebody. I assume that that is what counsel intends to do.

Mr. Maguire: Exception.

Q. Go ahead. A. And if you wouldn't put a man on——

By the Court. 1262

Q. No. Just a moment. Do you know who the man was? A. No, at that time I didn't know.

Q. Well, do you see him in court? A. No, I couldn't identify none of them at that time.

Q. Did you ever find out who he was? A. Well, yes.

Q. Did you ever see him afterwards?

Mr. Marks: May we have the answer to your Honor's prior question? He said yes.

The Court: That is what I asked him, and he said yes, he did. That is why I asked him next if he ever saw him afterwards.

Mr. Marks: I think your Honor interrupted him.

The Court: Please don't tell me what I did. 1263
I know what I am doing.

Mr. Marks: I was merely observing that he was answering——

The Court: I asked a question and I got an answer and I asked the next question. Please don't tell me that I don't know the answer I was trying to get. What is the question?

Q. (Read.) A. Yes, I have saw him.

Q. Where? A. At different locations in the city.

Q. Did you ever see anybody else with him? A. Yes, sir.

Q. Was there anybody you ever saw with him whom you know by name? A. No, not by name.

Q. Well, do you see anybody in this court room whom you ever saw him with at any time? A. Not at that time.

Q. Well, at any time. Do you see anyone here now whom you ever saw with the person who approached you as you came out of the Holland Tunnel, either then or at any other time? A. No, sir.

1265

Mr. Marks: Can the witness stand up and look around?

The Court: Certainly, if he wants to. Walk around, too. Step down off the stand if you can get a better view.

The Witness: Well, there is one man back there I can identify. That is all.

The Court: All right. Go over there and indicate who he is.

The Witness: That gentleman with the green sweater on there (indicating).

The Court: Somebody may be color blind. You better go over there and point him out.

(Witness points out a man.)

1266

Mr. Marks: May the clerk call the name of George Needelmann?

The Clerk: George Needelmann, rise.

(A man stood up.)

The Court: Is that the man who just rose?

The Witness: Yes, sir.

Mr. Marks: May the record show that the witness identified George Needelmann?

The Court: Yes.

By Mr. Marks.

Q. Is there anybody else? A. I am not familiar with any of them other than Needelmann.

Q. Other than Needelmann, you say? A. That is right.

The Court: Where did you see this person and Needelmann together?

The Witness: I saw them around Hudson and Beach Streets quite a bit.

Q. What happened as you drove out of the Holland Tunnel? A. Well, the man would approach the truck.

Q. What did he say? A. He would say I had to put on 1268
a City man.

Q. What did you say? A. I said sometimes we didn't and asked him to get off the truck.

Q. Was he on the truck? A. He would sometimes step on the running board as you drove out, yes. That was very few occasions, your Honor. It wasn't often.

Mr. Murray: I don't understand whether this witness is testifying as to Needelmann or as to some unknown person.

The Witness: Some unknown person, as we came out of the tunnel.

The Court: He is testifying as to something said by an unknown person whom he on several occasions 1269
thereafter had seen in the company of the defendant Needelmann in the vicinity of Hudson and Beach Streets in the Borough of Manhattan.

Is that correct or not?

The Witness: Yes, sir.

Mr. Murray: I move to strike out the testimony.

The Court: Motion denied.

Mr. Murray: Exception.

1270 *Paul E. Koontz—For Government—Direct.*

Q. Did you ever ask that man for his union book? A. I have on occasions, yes.

Mr. Boudin: I object to it.
The Court: Denied.

Q. Did he ever show it to you? A. Yes, sir.

Mr. Boudin: I object to that.
The Court: One moment. I will sustain the objection to that.

By the Court.

1271

Q. What did he say to you? A. In regard to his book, you mean?

Q. Well, he showed you a book? A. Yes.

Q. Did you examine it? A. Sometimes I looked at it.

Q. Did you read it? A. No, I didn't read it.

Q. Do you know what the book said? A. No, I couldn't see what it said.

The Court: All right.

By Mr. Marks.

Q. Did it have the name of any union on it?

1272

Mr. Boudin: I object to that.
The Court: I will sustain the objection.

A. It had the number——

Mr. Boudin: I move to strike it out.
The Court: Strike it out.

Q. Did it have any number?

Mr. Boudin: That is objected to.

A. Yes, sir.

The Court: Sustained.

Q. What did you see on the book?

Mr. Boudin: Objected to.

The Court: That is the question I put to him. He said he couldn't state.

Mr. Marks: May I repeat the question and ask him again? 1274

Q. What did you see on the book?

Mr. Boudin: Objected to.

A. I seen the man's name and the number. That is all I ever looked at.

The Court: What was the man's name you saw?

The Witness: Different names. I don't remember any more, at that time.

The Court: Can you remember any of the names you saw in those books?

The Witness: No, I can't.

Q. What was the number you saw? A. 807. 1275

Mr. Boudin: Objected to.

Q. Was the number always the same?

Mr. Maguire: Objected to as immaterial.

A. Yes, sir.

The Court: I will allow that.

Q. What was the answer to that? A. Yes, sir.

Mr. Maguire: Exception.

Q. Did any of these men ever ask you if you were a union member? A. Yes, sir.

Q. Tell us what was said along those lines.

Mr. Maguire: Objected to.

The Court: Sustained unless you indicate when this happened and who was there, or identify the
1277 person who asked the question as somebody connected with this case.

Q. As you drove out of the Holland Tunnel did the man whom you later saw in the company of George Needelmann ever ask you if you were a union member? A. No, I can't answer that.

By the Court.

Q. How many different men approached your truck on occasions when you came out of the Holland Tunnel? A. One, two, three; maybe sometimes four would be around there.

1278 Q. I mean how many different men? Was it always the same man? A. No, sir.

Q. Well, how many different men approached you? A. I couldn't answer that.

Q. Have you any idea? A. No, I don't.

By Mr. Marks.

Q. Was it more than two or three different men? A. Yes, more than that.

Q. About how many was it? A. Well, it was five or six. Maybe more. I don't know.

Q. How many of them have you seen together on the same occasion? A. Well, I saw as high as twelve of them in one group.

Q. At the Holland Tunnel did any of these men ask you about your union affiliations?

Mr. Maguire: I object to that.

The Court: He may answer yes or no.

Mr. Maguire: Exception.

A. No, not at that time.

Q. Did they at any later time? A. Well, I don't know. 1280

Mr. Maguire: Same objection.

The Court: Overruled.

Mr. Maguire: Exception.

The Court: He says he doesn't know.

Q. What did you tell these men when they hopped on your truck??

Mr. Maguire: Objected to.

A. Sometimes I would——

The Court: I sustain the objection. 1281

Q. What did you tell the man who first hopped on your truck at the exit to the Holland Tunnel?

Mr. Maguire: Objected to.

The Court: Is that the man whom he afterwards saw in the company of the defendant Needelmann?

Mr. Marks: Yes.

Mr. Maguire: It is not binding on this defendant.

1282 *Paul E. Koontz—For Government—Direct.*

The Court: Overruled.

Mr. Maguire: Exception.

Q. What did you tell him? A. I would tell him I wasn't putting on no city man.

Q. What did he say? A. Well, he would say you had to.

Q. What was your answer? A. Well, sometimes we did We mostly always gave in to him. Sometimes we didn't where the houses received it without their consent.

Q. Without whose consent? A. The union men.

Q. About how often did you meet these men near the exit to the Holland Tunnel? A. Oh, not very often.

1283 Q. Did you when you drove your truck into New York City generally go to the same consignee? A. No, it varied. We may get to one place today and not get back for six months.

Q. Well, did you ever go to R. C. Williams? A. Yes, sir.

Q. How often did you go there in 1937? A. Oh, I couldn't answer that.

Q. Quite often? A. Quite often, yes.

Q. What others did you go to often? A. Well, we would go to Leggett frequently.

Q. Is that a wholesale grocery house? A. Yes. Also Austin, Nichols.

Q. What is the nature of their business? A. That was a wholesale grocery at that time. Numerous bakeries; Dugan, for instance.

1284 Q. Did you ever see George Needelmann at any of those places? A. Well, I don't know.

Q. Where did you first see Needelmann? A. When I first learned to know Needelmann's name was down on Beach and Hudson Streets after we started coming in regular.

The Court: After you started what?

The Witness: After we started coming in there regular, and they would go out with the trucks every time we came in.

By the Court.

Q. Do you mean by that that Needelmann had anything to do with the unloading of merchandise on your truck? A. Yes, sir. He would unload it.

Q. And when you saw Needelmann, who did the driving after you saw him? A. I did.

Q. Did you remain with the truck all the time? A. Yes, sir.

1286

Q. At the time you met Needelmann had you already made any deliveries? A. Well, at times we had.

Q. Well, after Needelmann came on your truck did he remain on the truck until the deliveries were made? A. Yes, sir, unless we made some deliveries in Jersey on our way.

Q. I am talking about deliveries in New York. A. Yes, sir.

Q. Did Needelmann come on your truck before you made any deliveries in New York on the days that he did come on? A. No, sir.

Q. Did you make deliveries in New York before Needelmann came on the truck? A. Not after I learned to know Needelmann, no.

1287

Q. Well, that is what I asked you. Needelmann came on your truck after you had arrived in New York through the Holland Tunnel? A. Yes.

Q. Then he remained on the truck until all deliveries were made thereafter, is that right? A. New York deliveries, yes.

Q. Yes, New York deliveries. Now, did you make any deliveries after you made the New York deliveries? A. Sometimes.

Q. Where? A. In Jersey.

Q. You didn't make those deliveries on the way in? A. Sometimes we would. Sometimes we made them on our way back, whatever we figured was more suitable.

Q. The deliveries that you made on the way back, the merchandise was left in the car after Needelmann had left you? A. Yes, sir.

Q. Now, how many times was Needelmann on your truck? A. I couldn't answer that.

Q. Well, approximately? Once or twice or more? A. More than twice.

Q. Well, how many times? A. I couldn't make any esti-
1289 mate—exact amount, on that.

Q. Would you say as many as a half-dozen times? A. Yes, a half-dozen times.

Q. As many as a dozen times? A. Well, say a half-dozen.

Q. How long after you saw this man whom you say you subsequently saw with Needelmann was it before Needelmann began to assist you? A. Oh, I can't answer that.

The Court: Proceed.

By Mr. Marks.

Q. Now, when you asked this man out near the exit to the Holland Tunnel to step off your truck, did he do so? A. Yes, sir.

1290 Q. What happened then? A. He would get into the car at times and follow you.

Q. Who would? A. An automobile would follow you until you get to your destination.

Q. An automobile would follow you to your destination? A. Yes, sir.

Q. Who would be in the automobile? A. Well, at that time I didn't know any of those men.

Mr. Maguire: I ask that that be stricken.

The Court: Well, do you know anyone now who was then in the automobile?

The Witness: No, I don't.

Q. Were any of those persons persons whom you later saw with Needelmann? A. Yes, sir, I saw them around there, but I still don't know them.

Mr. Marks: May I submit now, your Honor, that it may stand?

The Court: No.

Q. Did the first man who approached your truck near 1292
the exit to the Holland Tunnel ever get into an automobile? A. I can't answer that.

By the Court.

Q. Well, you said that you told the man who got on your truck to get off and he got off. After that did you see him get in an automobile? A. Yes, sir.

Q. And did that automobile follow you or proceed in the same direction you were going? A. Yes, sir.

By Mr. Marks.

Q. How many people were in that automobile? 1293

Mr. Maguire: I still object to it and move that it be stricken.

The Court: I will take it. Denied.

Mr. Maguire: Exception.

A. Well, one, two, or three sometimes.

Q. Did you see the occupants of that automobile again? A. Yes.

1294 *Paul E. Koontz—For Government—Direct.*

Q. Where? A. Where we would make our delivery.

Q. What did they say there? A. Well, they say you would have to put on a City man.

Mr. Maguire: Objection.

The Court: I will take it.

Mr. Maguire: Exception.

Q. What did you say? A. Well, it would result in an argument and mostly we would put him on.

Q. Tell us everything that they said. A. I can't do that. That is too long ago.

1295 Q. Tell us what you can now remember. A. I can't make no statement that I really don't know.

Q. Can you remember anything else that they said other than what you have told us? A. Well, they said we would have to put a man on. Sometimes they would go to the receiving clerk if you put up an argument.

The Court: No.

Q. Did you hear him say anything to the receiving clerk? A. I have several times.

Q. What?

Mr. Maguire: Objected to.

1296 *By the Court.*

Q. Who said what? Or who is the person that talked with the receiving clerk? A. Well, I heard Needelmann one time talk to the receiving clerk.

Q. What did you hear him say? A. He said, "You are not going to let this man deliver this, are you?" The man said, "No, you better not back in unless you put him on."

By Mr. Marks.

Q. Where was that? A. That was on Washington Street, I believe. I am not sure of the name of the place.

Q. Now, what else did you hear Needelmann say? A. Well, I fetched a load in one time——

Q. Go ahead. What else did you hear Needelmann say? A. Well, he said if I didn't put a man on he would run the truck in the river.

Q. When was that? A. Well, that is quite a while ago, I can't give any date on it.

Q. How many people were there with him when he said that? A. He and I, that is all. 1298

Q. Do you remember where that was? A. No, I can't answer that.

Q. Did you put him on your truck that day? A. That was after we had unloaded.

Q. That was after you had unloaded? A. Had unloaded that day.

The Court: Was that before Needelmann had been doing any unloading on your truck?

The Witness: No, that was after it.

Q. Who had unloaded your truck that day? A. Needelmann.

Q. Did you pay him? A. No, I don't think I did at that time. 1299

Q. Had he unloaded? A. He had unloaded, yes.

Q. When did you pay him? A. Well, I think at that time he was getting paid each week as they unloaded.

Q. By your boss? A. Yes, sir.

Q. Now, did he ever say anything else to you? A. Never made no other threats or anything like that, no.

Q. That was the only time? A. That is the only time I remember of.

Q. Did the man whom you first saw near the exit to the Holland Tunnel ever approach you at any of these warehouses? A. Yes, sir.

Q. About how many times? A. Oh, two or maybe three.

Q. When he approached you was your truck loaded? A. Yes, sir.

Q. Completely loaded? A. Well, maybe not always. We may have made a Jersey stop on the way in.

Q. What did he say to you? A. Why, I haven't any definite statement. He said, "You will have to put a City man on."

Q. What did you say? A. I didn't say much of anything.

1301 Sometimes we would have a little argument.

Q. Well, tell us what was said. A. Well, I don't know. That is too far back.

Q. You say you had an argument. Tell us what you told him. A. I told him I wasn't going to and he said I had to. Just argued back and forth awhile till we would give in; that is all.

Q. Was he usually alone? A. Not always, no. Sometimes there would be three or four, and I have seen five of them.

Q. Was there one occasion when you saw more than five? A. Yes. I saw twelve one time.

Q. Where was that? A. That was over in Brooklyn.

Q. What happened there?

1302 Mr. Maguire: I object to it unless there is some identification.

The Court: I think that is correct. I will sustain the objection.

Q. Do you know any of the people who were among those twelve? A. Not at that time, no.

Q. Do you know them now? A. No, I don't.

Q. Was the man whom you saw near the exit to the tunnel among them? A. No, I can't say that.

Q. Were there any among that group of twelve whom you had seen earlier or later together with Needelmann? A. No. I didn't know any of them at that time—know the names of any of them.

The Court: Well, did you learn the identity of any of those twelve since?

The Witness: No, I haven't.

The Court: Members of the jury, I presume this is just as good an opportunity as any for me to interrupt to say this: As I have pointed out to you, 1304
a conspiracy is an agreement between two or more persons either to do something which is illegal or to do something which is legal in an illegal manner. The general rule of law is that hearsay conversations are not admissible, and you can perceive the reason for that is that if somebody tells what somebody else says it places the person against whom the statement is made at the disadvantage of not having before him for cross-examination the person who is supposed to have made the hearsay statement. In other words, if you say something about me and you are here, I can examine you about it; but if you say something that somebody who is off in some other place said I can't ask that person anything about it. 1305

Now, there is an exception to that rule made in conspiracy cases. Where the conspiracy is established as between two or more people, those who are parties to the conspiracy are immediately agents of one another and what one person in a conspiracy does in furtherance of the conspiracy is just as binding upon the other persons who are in the conspiracy as it is binding upon himself. So if he as

a conspirator goes out and has a talk with somebody, even though the other conspirators are not present—and as to them, of course, that is hearsay testimony—the law makes an exception as to its admissibility because it is the act of one conspirator doing something in the absence of another, but the doing of which is binding upon all because they are agents of each other. And the law also is that even though a person may not at the time be a member of the conspiracy, when something is done with respect to which it is sought to hold him responsible, that if thereafter he becomes a member of the
1307 conspiracy he is bound by whatever happened prior to that time upon the theory of ratification. And then he is bound until such time as he ceases, if he does, to be a member of the conspiracy.

As I have pointed out to you, the Government in this case has the burden of proof to establish that there was a conspiracy, and if you find that there was a conspiracy involving two or more persons, then what may have been done by one, what may have been said by one, in furtherance of that conspiracy is binding upon the others. But in order that you may hold any defendant accountable you must find that he was a member of the conspiracy and that the doing of the thing that is charged as
1308 against him was in furtherance of it.

Something has been said here with respect to the identification of persons, or, rather, with respect to the doing of things by persons who are not specifically identified. Well, of course, under certain circumstances that is permitted. Suppose that I were entering my home, or a place of business if I had one, and there were a hundred people assembled in furtherance of a conspiracy and someone in that crowd whom I couldn't identify because

of the aggregate number of people, threw a stone or made a remark: that could be testified to without the specific identification of the person because of the surrounding circumstances. Assuming that I were the victim of a conspiracy and that something happened at some isolated place and that was performed by certain people who not alone were not identified but were not shown to have any connection with anyone whom it was presumed was in the conspiracy: then under those circumstances that proof is not, as yet at least, admissible; and that is the reason I have excluded the testimony with relation to certain transactions attempted to be 1310
shown over in Brooklyn at Pier 46.

Now we will take a recess for five minutes.

(Short recess.)

The Court: What was the last question, Mr. Reporter?

(Last question and answer read.)

By Mr. Marks.

Q. Have you ever seen any of those twelve in the company of George Needelmann later on or before that? A. Not that I know of.

Q. Where was it that you saw these twelve men? A. In Brooklyn: Austin, Nichols. 1311

Q. Austin, Nichols? A. Yes.

Q. And were you there with your truck? A. Yes.

Q. What were you doing there with your truck?

Mr. Maguire: Objected to as immaterial.

The Court: Sustained.

Q. Do you see here in the court room, Mr. Koontz, any other persons whom you know? Now, you may stand up

and take your time and look around the court room. Won't you stand up and look around? A. (Standing up) Not that I know the names of any exactly, no.

Q. Well, people whom you recognize. Do you want to come down here and walk over there? A. (Stepping down from witness stand). I saw some of them.

Q. Tell us which ones you have seen. A. I don't know their names.

Q. That is all right; tell us which ones you have seen. A. Those two gentlemen beside Needelmann there (indicating).

The Court: Go over and indicate who they are.

1313 We cannot tell from here.

The Witness: This man (indicating) and that man, both (indicating). I saw them.

Q. Any others?

The Court: One moment. Let us find out which ones he is identifying. What are the names of those defendants?

Mr. Marks: May the clerk call the names of Bernard Randazzo and Frank Downs?

The Clerk: Bernard Randazzo and Frank Downs. (Two men stood up.)

The Court: Now, where did he see them?

1314 Q. Where did you see them? A. Beach and Hudson Streets.

Q. Did you ever see them together with Needelmann? A. Yes.

Q. Approximately when? A. (No answer.)

By the Court.

Q. Well, were they together with each other at any time? A. Yes.

Q. When Needelmann was not present? A. I don't know on that.

Q. Well, when did you see them there? A. We come in there in the morning to get a man and he goes with us to unload.

Q. Well, did either one of those men ever help you to unload? A. Yes, Needelmann has quite a number of times. I don't believe the other two have.

By Mr. Marks.

Q. Have they ever been on your truck? A. Not that I just remember. I don't believe they have.

Q. Have you ever seen them at any consignees? A. Yes. 1316

Q. Where? A. Well, we deliver quite a few places around Hudson and Beach.

Q. Beg pardon? A. We deliver quite a few places around Hudson and Beach, down there in the vicinity. I saw them around there.

Q. Have you ever had any conversations with either Randazzo or Downs? A. Well, I have talked with them.

Q. Well, tell us what you said and what they said to you.

Mr. Maguire: May we have the time fixed?

The Court: Yes. Let us have the time fixed.

Q. When did you talk to them? A. Well, I can't make 1317
that remark.

Q. Well, how long ago, approximately? A. Oh, within the last few months.

Q. Did you have any conversations with them before that? A. Yes, I think so.

Q. When was the first time that you can remember ever seeing Randazzo and Downs? A. Oh, a year or so ago. I can't make any definite statement on that.

Q. Now, is there anybody else there that you know? A. No, that is all.

Q. I don't mean by names. I mean is there anyone else there whose face you recognize? A. No.

Q. Mr. Koontz, do you know what is meant by the term "gypsy"? A. No, sir.

Q. You have never heard of that term? A. I have heard the term.

The Court: Have you ever seen one?

The Witness: I have heard the term, yes, sir.

1319 Q. With respect to the trucking industry? A. I never saw any of them trucking.

Q. Well, do you know what the term means in the trucking industry? A. Yes, sir.

Q. Will you tell us what that means? A. Well, it means a guy that goes into the city and delivers without a City man on it, I guess. That is all I ever could make out of it.

Q. Have you ever heard Needelmann say anything about a gypsy? A. I have heard that remark hundreds of times. I don't know just who from.

The Court: No. The question is whether you ever heard Needelmann make such a remark or use any such word.

The Witness: I can't say I ever heard him say
1320 that. I have often heard it.

Q. You can't say that you heard Needelmann say that? A. I don't know who said it now.

Q. Have you ever heard Randazzo or Downs use that term? A. No.

Q. You have not? A. No.

Mr. Marks: May I have this marked, please?

(Marked Government's Exhibit 7 for Identification.)

Q. I show you Government's Exhibit 7 for Identification and ask you if that brings to your mind anyone you know (handing)? A. Yes, I know him by the name of Tony.

The Court: No.

Q. Just answer yes or no.

By the Court.

Q. Look at the paper shown you and state whether you 1322
recognize that as relating to anybody with whom you are acquainted? A. Yes, I have met that fellow. He has unloaded me several times.

Q. Do you know what his name is? A. I have known him by the name of Tony, that is all.

By Mr. Marks.

Q. Now, will you step down once again, Mr. Koontz, and look around the court room and tell us if there is anyone else here that you know. A. I can't recognize him.

Q. Go over close and take your time. A. (Stepping down from stand.) This gentleman here (indicating).

Mr. Marks: May the clerk call the name of Tony 1323
Venditti?

The Clerk: Tony Venditti.

(A man stood up.)

Mr. Marks: May the record show that that is the man that the witness identified?

The Court: Well, is it the man, Mr. Witness?

The Witness: Yes.

The Court: He is the man who unloaded you, whom you knew as Tony?

The Witness: Yes, sir.

Q. Now, have you ever seen Venditti together with Needelmann? A. Yes.

Q. And have you ever seen Venditti and Needelmann and Randazzo and Downs together? A. Yes, I would say I have.

Q. Where? A. Hudson and Beach Street.

Q. When did you first meet Venditti? A. Several years ago, two years approximately; maybe more than that.

1325 Q. Did you ever have any conversation with him at that time? A. Yes, we talked.

Q. About your truck? A. About loads and unloading.

Q. Well, tell us what you can remember about those conversations.

Mr. Maguire: May we have the conversations more completely placed as to time?

The Court: Yes, if he can do it.

Q. Do you remember the first time you ever saw Tony Venditti? A. No, I can't.

Q. Do you remember the first conversation you had with him? A. No, sir.

Q. But you know that you did have several conversations with him? A. Yes.

1326 Q. Now, can you recollect the subject of any of those conversations? A. No.

The Court: Mr. Marks, you might pursue that question a little further in relation to the time when he came in here and unloaded his own trucks and the time when he had assistance from others, and the time, in relation to that, when he first met Venditti and any of these other persons.

Q. Now, you have testified, I believe, that at one time you unloaded your own trucks here in New York? A. Yes.

By the Court.

Q. When was that? A. I would say in 1936, the year 1936.

Q. Well, up to when? A. Up to the spring or summer of 1937.

Q. And then did you have the assistance of somebody else? A. Yes, sir.

Q. Now, can you say more definitely what month it was when you first began to have any assistance at all? A. No, 1328
I can't.

Q. Well, how long after you began to have assistance did you make the acquaintance of any one of these four men whom you have named and identified? A. I don't know that.

Q. Which one did you meet first? A. I can't answer that.

Q. How long after you met Needelmann was it before you met Venditti? A. I think, if I remember right, I met them all around the same time.

Q. And that would be in what part of the year 1937 A. Around November, I would say, 1937.

Mr. Marks: Has your Honor finished with that 1329
line of questioning?

The Court: Yes.

By Mr. Marks:

Q. What were Needelmann, Randazzo, Downs and Venditti doing when you saw them in the vicinity of Hudson and Beach Streets? A. That was after we came in there—

always came in there and got one of them on, take one of them with us.

Q. What? A. We always came in there and got one of them and take them with us.

Q. You mean you had any one of those four? A. Yes.

By the Court.

Q. Have you ever had all four of them at one time or another on your truck? A. No, I would say I have had three: Tony and Needelmann and the other gentleman over there; I don't know his name.

Q. Randazzo or Downs? The man with the blue sweater
1331 or the man with the black sweater? A. The man with the blue sweater—the blue shirt.

By Mr. Marks.

Q. Is that Randazzo? A. I don't know.

Q. Is it the one sitting next to Needelmann? A. Yes.

Mr. Marks: May the record show that that is Randazzo?

The Court: Yes.

Q. After those men began to work on your trucks did you continue to work yourself in New York City? A. No, sir.

1332 Q. You drove the trucks yourself? A. Yes, sir.

Q. Did you do anything else in addition to driving them? A. Yes; helped them to unload lots of times. Most always.

Q. How long did it take you, as a rule, to unload your trucks in New York City? A. Well, anywheres from one to four hours.

Q. And did these men always get the same pay? A. So far as I know they did, yes.

Q. How much?

The Court: Did you pay them?
The Witness: No, sir.

Q. Did you ever pay anybody, anyone of those four for unloading your truck? A. No, sir.

Q. Did you ever pay anybody in New York City for unloading your truck? A. Yes, sir.

Q. When? A. Well, when we first started.

Q. Where? A. Well, numerous places, on Washington Street and over at Nichols.

Q. Whom did you pay? A. Well, I don't remember who they were. I did not know who they were at that time. 1334

Q. Did you have any talk with any of the men whom you paid? A. Yes, we talked.

Q. Did you ask them who they were? A. Yes, they would always give you a slip showing you paid them. We had to have it to get our money.

Q. Did you ask them anything about their union affiliations?

Mr. Maguire: Objected to.

A. No, sir.

Q. Did they ever show you anything? A. The union book, that is all.

Q. Did you ever look at it? A. Yes, sir.

Q. And what did you see on it? A. The name would be on it, and their local number, that is all. 1335

Q. What local number did you see on it? A. 807.

Q. Was it always 807? A. Yes.

Q. Now, did you ever pay any money to any such men? A. Yes, sir.

Q. About how many times?

Mr. Maguire: I object to it.

The Court: Well, I will sustain the objection, unless you diversify and find out who was paid and under what circumstances.

Q. Do you know the names of any of those men now? A. No, I don't.

Q. Was that before you began to meet Needelmann and the other three at Beach and Hudson? A. Yes.

Q. About how long before? A. Oh, maybe a year approximately.

Q. Was that about the spring of 1937? A. Yes, somewhere around there.

1337 Q. How many times, beginning in the spring of 1937, did you pay money to such men?

Mr. Maguire: Objected to as immaterial and as not binding on these defendants.

A. Maybe twenty times.

The Court: I will sustain the objection.

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out.

Q. Did you ever see anybody to whom you paid money on any of those occasions with Needelmann? A. No, I don't believe so.

1338 Q. Or with Randazzo? A. No.

Q. Or with Downs? A. No, sir.

Q. Or with Venditti? A. No.

Q. Did you ever see any of those men to whom you paid money with the man that you first saw near the exit to the tunnel? A. Yes; we always paid those guys.

Q. You have seen that man together with some others whom you paid money; is that right? A. Yes.

Q. Where? A. Well, at numerous places where we unloaded.

Q. How long after you first saw this man near the exit to the Holland Tunnel? A. What do you mean, how long after?

Q. Well, was it approximately during the same period? A. Oh, yes, during the same period.

Q. And how often did you come into New York at that time? A. Approximately three times a week.

Q. About how many times a week beginning at that time did you see these men? A. Well, maybe we would see them one week and maybe twice the next week; maybe we would go for several weeks and would not see nobody.

Q. And where would you see them? A. Well, when we delivered—when we delivered or when you came out the tunnel. 1340

Q. About how many different men have you seen as you came out of the Holland Tunnel? A. Three. One to three.

Q. At one time? A. Yes.

Q. Have you ever seen any of those men any place else after you saw them at the Holland Tunnel? A. Yes, sir.

Q. Where? A. Where you would make your delivery, either up at Leggett's or at Nichols, or wherever you were going.

Q. On the same trip? A. Yes.

Q. Did you see any automobile? A. Yes.

Q. Where? A. I would see the automobile when we would arrive at our destination where we unloaded.

Q. And who would be in the automobile? A. Well, I don't know who they were at that time. 1341

Q. Well, you had seen them before, hadn't you? A. Yes.

Q. Where? A. Oh, I saw them when we come out the tunnel.

Q. Now, what would those men say to you?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. About how many times did you pay money to these men?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. Now, did you ever pay any money to the man whom you first saw near the exit to the Holland Tunnel? A. Yes, sir.

Q. How often? A. Well, I can't make any answer on that.

Q. More than once? A. I would not say on the fellow I first saw, because I don't know; I don't remember him. You see too many fellows up here to remember them.

1343 Q. But you do know that you did pay him money? A. Yes.

By the Court.

Q. Well, did the man to whom you paid the money do any work? A. Yes, sir.

Q. Where did he do the work? A. At the wholesale house where he delivered.

Q. Well, in connection with what? A. With the loads you were carrying.

Q. What did the man do? A. He would unload the load.

By Mr. Marks.

1344 Q. Did you do any work while he unloaded? A. Sometimes I have; sometimes I have not.

Q. How long did it take you to unload the truck? A. Sometimes one hour; sometimes four.

Q. And how much did you pay that man? A. At that time I think it was $9.42, if I remember right.

Q. For each trip? A. That is right.

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. Did Bernard Randazzo, one of these men whom you pointed out, ever work on your truck? A. Yes.

Q. When? A. Well, just recently.

Q. Well, did he ever work on your truck after June 1, 1938? A. Yes, sir.

Q. Did he work on your truck in 1937? A. No, I don't believe so.

Q. Or 1936? A. No, sir.

Q. Did he work on your truck before June 1, 1938? A. I can't answer that.

Q. Or was it after the summer of 1928 that he worked on your truck? A. Yes, sir. 1346

Q. Afterwards? A. Yes, sir.

Q. Now, you pointed out Frank Downs. Did he ever work on your truck? A. I know three of them. I don't know whether the fourth——

Mr. Murray: Will Downs stand up, please?

(A man stood up.)

The Witness: I don't believe that man ever has. I don't know.

Q. Did he ever talk to you about working on your truck? A. No, sir; I would not say he did.

Q. Now, you pointed out Tony Venditti.

Mr. Murray: Will you stand up, Venditti, please? 1347

(A man stood up.)

Q. This gentleman? A. Yes, sir; he has.

Q. Did he work on your truck before the summer of 1938? A. I don't know.

Q. Or was it recently that he worked on your truck? A. No, it had not been in the last year I could say.

Q. It has not been within the last year? A. No.

Q. But was it, according to your recollection, after the summer of 1938? A. I would say it was around the summer of 1938.

Q. Would you say it was after June of 1938? A. Yes, I imagine so.

Q. Now, did you personally ever pay Needelmann for any work that he had done? A. No, sir.

Q. And of your own personal knowledge, of course, you don't know what he was paid, do you? A. No; anymore than I have often heard statements——

Q. You have heard someone say something, but you
1349 don't know yourself; is that right? A. I saw checks fixed up for that.

Q. Did you ever get any receipts from him? A. They always give us a receipt after they unload.

Q. And any time that any member unloaded he gave you a receipt; is that right? A. Yes, sir.

Q. Signed with his name; is that right? A. Yes, sir.

Q. And he gave you a receipt for the purpose of taking it back to your employer; isn't that correct? A. That is right.

Q. And was there ever any occasion when any man that helped you to load refused to give you a signed receipt? A. No, sir.

Q. And on occasions did they give you receipts when you did not ask for them? A. Yes, sir.

1350 Q. Now, I don't know whether or not I precisely got where your place of business was in Pennsylvania. What is the name of it again, please? A. Biglerville.

Q. Now, how far is Biglerville from New York? A. Approximately 210 miles.

Q. And during the latter part of 1936 and 1937 and the first part of 1938 were you making trips from Biglerville, Pennsylvania, to New York? A. Yes, sir.

Q. What kind of a truck did you operate? A. Just what do you mean?

Q. Well, how many ton truck? A. Ten to twelve—it carried ten to twelve ton pay load.

Q. And were there usually ten to twelve tons on your truck? A. Well, sometimes as low as five tons.

Q. And sometimes how high would it go? A. And sometimes twelve, twelve and one-half.

Q. What time would you arrive in New York when you made your trips from Pennsylvania? A. I arrived at numerous times.

Q. Well, what time was it your habit to leave Pennsylvania to start to New York? A. Leave Pennsylvania about 1352
5 o'clock in the evening usually.

Q. And how long would it take you to reach New York? A. Driving time eight hours, nine hours.

Q. And that would bring you into New York at what time? A. Bring me into New York three, four, five in the morning; it depends on what time you got away up there.

Q. And when you reached New York at three, four, five in the morning, what did you do before you went to the places of the consignees? A. Oh, we did numerous things.

Q. Did you go to bed? A. No, didn't go to bed.

Q. What time did you start your deliveries in the morning, say, at Austin, Nichols? A. 8 o'clock.

Q. And on an average how long would it take you to make your deliveries in New York before they were all completed? A. Well, one to four hours to handle the load 1353
you have.

Q. So if you started at nine in the morning you would be done about one in the afternoon if you were working four hours? A. Yes.

Q. Was that a fair average of the time that it generally took you to unload your merchandise? A. Yes.

Q. What kind of merchandise did you truck? A. Mostly canned goods.

Q. When you got done, say, at 1 o'clock in the afternoon, then did you start back immediately to your headquarters in Pennsylvania? A. Sometimes.

Q. And how long would it take you in the daytime, say, if you started at 1 o'clock in the afternoon to reach back home? A. Well, if we went right back, you would go back in about the same time you came up; eight hours.

Q. That would get you in at what time? A. 9 o'clock.

Q. And how many hours continuously would you have been working on that trip? A. Anywheres from twenty to thirty.

Q. Beg pardon? A. Twenty to thirty, maybe, depending on the trip.

1355

Q. And were you working twenty to thirty hours without any sleep? A. No. We carried a helper before that until we started picking up these local men. Then we did it ourselves.

Q. Was there any time when you worked continuously for twenty to thirty hours without any sleep? A. Well, I would not say without any sleep, no.

Q. Well, except to take cat naps that you got on the seat of your truck while you were riding? A. Yes.

Q. Was that about the only sleep you got? A. Sometimes. Sometimes we would lay over a while somewhere.

Q. Having started at 5 o'clock in the afternoon from Pennsylvania and reach New York, and then going back the next night, how soon would you work again after that

1356 trip? A. The following evening run.

Q. Beg pardon? A. The following evening.

Q. You mean twenty-four hours later or— A. Well, like when you got done here at 1 o'clock, if we go right back, we would be back about nine; and we would go out the following evening about five.

Q. You mean the same evening about midnight? A. No, about five the next evening.

Q. About five the next morning? A. No, the next evening.

Q. About five the following day? A. Yes.

The Court: Not the following day——
Mr. Murray: The following evening.
The Court: The following evening.

Q. Well, that is, if you got in at 9 o'clock, say, on Wednesday night, you would start out on another trip the next evening, that is, Thursday evening, at 5 o'clock; is that what you mean? A. Yes, sir.

Q. So you would have eighteen or twenty hours between trips? A. Yes, sir. 1358

Q. And would the following trip consume between twenty and thirty hours? A. Yes, sir.

Q. Did you do that every week? A. Yes, sir.

Q. For how many years? A. Approximately six.

Mr. Murray: That is all.
The Court: Any further cross-examination?
(No response.)
The Court: Any redirect examination?
Mr. Marks: Yes, sir.

Redirect examination by Mr. Marks.

Q. Mr. Koontz, when you unloaded the truck yourself in New York City, did you travel from Pennsylvania to New York with anyone? A. Yes, we always carried a helper then. 1359

Q. After the 807 took over your truck in New York City did you travel with anyone? A. At times we did, yes; at times we did not.

Q. Would you say you usually carried a helper or usually you did not? A. We usually didn't after.

Q. You usually didn't; is that right? A. That is right.

Q. When you carried a helper did you unload alone? A. No, the helper and I would unload.

Q. Did you do all the driving yourself in those days? A. No, sir.

Q. Beg pardon? A. No, sir.

Q. Tell us what would happen. A. Well, drive turnabout; one gets a little tired and then the other one would drive.

Q. Do you do all the driving yourself now? A. Yes, sir.

Q. Do you remain on your truck in New York City after
1361 the 807 men get on it? A. Yes.

Q. Do you help the 807 man to unload? A. Yes, sir.

Mr. Marks: That is all.

(Witness excused.)

The Court: Next witness.

Mr. Marks: Mr. Lescalleet.

ROY THOMAS LESCALLEET, residing at Aspers, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

1362 Q. Mr. Lascalleet, where are you employed? A. Beg pardon?

Q. Where are you employed? A. H. Earl Pitzer.

Q. Where is he? A. Biglerville, Pennsylvania.

Q. What business is Pitzer in? A. Trucking industry.

Q. And are you an over-the-road driver? A. That is right.

Q. Are you a member of any union? A. Was.

Q. You were? A. Yes.

Q. What union? A. 430 down in York.

Q. York, Pennsylvania? A. Yes.

Q. When did you join that union? A. November, 1937.

Q. And until when were you a member? A. Past November.

Q. That is, November, 1939? A. That is right.

Q. How long have you been employed by Pitzer? A. Beginning of five years.

Q. Did you formerly unload the truck yourself in New York City? A. Yes.

Q. When did you begin to drive into New York? A. Well, when I started working for Pitzer.

1364

Q. And how often did you come into New York? A. That was uncertain. Some weeks twice and some weeks once and some weeks not at all.

Q. When you did come into New York on those days did you have anyone with you? A. Yes.

Q. Who? A. We always had a helper.

Q. And did you drive all the way yourself? A. No.

Q. You and the helper alternated? A. That is right.

Q. Who unloaded the truck in those days? A. The helper and I.

Q. Did there come a time when you and the helper stopped unloading the truck in New York City? A. Did you say do I remember the time?

Q. I say, did there come a time? A. Yes.

1365

Q. Do you remember when that was? A. That was in 1937.

Q. What part of 1937? A. I imagine it was around November; around the time we joined the union.

Q. Around the time you joined Local 430? A. That is right.

Q. Do you remember the first occasion when you and the helper did not unload your truck in New York? A. No, I can't just recall the date.

Q. I am not asking you for the date, but do you remember the occasion? A. Well, they told us we had to hire a City man.

The Court: No. The question is, do you remember the occasion? Do you remember the circumstances?

The Witness: No, I just can't recall that.

Q. Well, tell us the first time that you do remember when you and the helper did not unload in New York. A. Well, one of the times I remember was at Austin, Nichols.

Q. And when was that? A. That was in the fall of 1937.

1367 Q. How did you come into New York City that time? A. In the tunnel.

Q. Holland Tunnel? A. That is right.

Q. Tell us what happened as you got out of the tunnel. A. Well, at that time we went over to Austin, Nichols.

Q. Yes? A. And then we were stopped over there by the union.

Q. Beg pardon? A. Over at the place by the union man.

Q. Where is Austin, Nichols? A. On Kent Avenue in Brooklyn—they were there.

Q. That is a wholesale grocery house? A. Yes. They are not there now. They were there.

Q. How many men stopped you?

1368 Mr. Murray: Now, I object, if your Honor please. It is an assumption.

Mr. Marks: That was the witness' answer, your Honor.

The Court: Well, suppose it was.

Q. How many men stopped you? A. Well, it was a couple. I just don't recall how many it was.

Q. Well, was it more than two? A. I would say yes.

Q. Do you know their names? A. No.

Q. Do you know now who they are? A. You mean if I would see them?

Q. Yes. A. No.

By the Court.

Q. Did you ever see them after that? A. Yes.

Q. How many times? A. Well, whenever you get in sections——

Q. No, I am talking now about these two men. A. Well, the particular two men I just don't know. That was four years ago, three years ago, and therefore I would not know.

1370

Q. It will be three years ago next November, won't it? A. Yes.

Q. We are in 1940, aren't we? A. Yes.

Q. So it is about two and a half years ago? A. Yes.

By Mr. Marks.

Q. Did those two men show you anything at Austin, Nichols?

The Court: Now, just a moment. May I suggest that you continue the examination along the line that I have heretofore indicated?

Mr. Marks: Yes.

1371

Q. Did you ever see those two men again? A. Well, I saw them after that.

Q. Did you ever see them together with anyone else? A. You mean with any other truck or any other people?

By the Court:

Q. Any other persons? A. I can't answer that definitely.

Q. Did you ever see them with anyone whom you then knew or whose identity you have since learned? A. No. At that time their faces were all strange to me.

Q. Well, did you find out afterwards who they were? A. Yes.

Q. So that you knew them by name? A. No, I didn't know their names at that time if it was the same guys.

Q. Well, did you learn their names afterwards? A. No, not the first guys that stopped us.

Q. Well, did you ever see them with anybody whose names you then knew of afterwards ascertained? A. No.

1373 *By Mr. Marks.*

Q. Will you look around the court room here, Mr. Lescalleet, and see if there is anybody that you know?

The Court: You better step down off the witness stand.

A. (Stepping down from witness stand) Yes, I saw them. I see some I know (indicating).

Q. Will you point out each one that you know?

The Court: You had better go over there a little way. We cannot tell from where you stand whom you are pointing to.

1374 A. This one (indicating).

The Court: Just a moment. That is the man with the blue shirt. What do you say his name is, Mr. Marks?

Mr. Marks: George Needelmann.

Mr. Randazzo: It is me he is pointing to.

Mr. Marks: Oh, I thought he was pointing to the other man. That is Bernard Randazzo.

The Court: Whom are you pointing to?

The Witness: This one (indicating).

The Court: Is that the man you mean?

The Witness: Yes.

The Court: He has been heretofore identified as Bernard Randazzo. Anybody else?

The Witness: This one (indicating).

Mr. Marks: That is George Needelmann.

The Court: Anybody else?

The Witness: The guy with the black jacket.

The Court: Which one?

The Witness: Right here (indicating).

Mr. Marks: Tony Venditti. 1376

The Court: Any others?

The Witness: I can't say that I do. That is all that I know of.

The Court: All right, come back here.

(Witness returns to stand.)

By Mr. Marks.

Q. When is the first time that you saw George Needelmann? A. I just can't recall what the first time was. It is a good many years ago.

Q. Well, about how long ago? A. A couple of years. Two and a half.

Q. Two and a half? A. Yes.

Q. That would be about the fall of 1937? A. Something like that. 1377

By the Court.

Q. Did you ever see any one of the three men whom you have now just identified at Austin, Nichols & Company? A. Not that first time we were stopped.

Q. Well, did you ever see the two men who you say stopped you at Austin, Nichols the first time— A. I didn't recognize their faces down there.

Q. Wait a minute until I finish the question. Did you ever see either one of the two men who stopped you at Austin, Nichols & Company the first time at any other time in company with these three men? A. Yes.

Q. Which one? A. I don't know him; I don't know his face.

Q. Well, you say you saw one or both of those men in company with these three men? A. Well, it is only one of the other guys. I don't know his name.

By Mr. Marks.

1379 Q. Well, which one of these three men did you see the other man with? A. With George and Tony there.

Q. George Needelmann and Tony Venditti?

The Court: Which is George? There are two Georges down there.

The Witness: George Needelmann.

Mr. Marks: Your Honor is referring to Randazzo as the other?

The Court: Yes.

Mr. Marks: Well, his name is Bernard.

The Court: Well, I think it was stated as "George" when he stood up.

1380 Q. Well, do you remember where you saw Needelmann and Venditti together with the man who first stopped you at Austin, Nichols? A. I don't recall any places besides over at Austin, Nichols.

Q. How long after the first time that this man stopped you did you see him there together with Needelmann and Venditti? A. Well, some time after when I came back. It may have been a month; it may have been two weeks.

Q. What did the two men say to you at Austin, Nichols the first time? A. They said we had to hire a City man to unload the truck.

Q. What did you say to him? A. We said we were union and we had two fellows there to unload our own trucks.

Q. Did you tell him what union you were a member of? A. Yes.

Q. What did you tell him? A. I told him with 430 local

Q. Is that the International Brotherhood of Teamsters? A. That is right, A. F. of L.

Q. And what did they say to that? A. They said we was over-the-road drivers. We still could not load or unload our own trucks, and then the house would not take it after all.

Q. Did you pay them any money on that occasion? A. 1382
Yes, we had to pay them.

Q. How much? A. $9.42.

Q. How long did it take to unload your truck that day? A. Evidently an hour.

Q. Is that your best recollection? A. Yes. To put a load in there it would not take any more than that.

Q. After you paid them the $9.42 what did you do? A. What did I do?

Q. Did you start right back for Pennsylvania? A. Well, after I got ready to leave the City, yes.

Q. When was the next time you were stopped in New York? A. I don't recall which place it was.

Q. Beg pardon? A. I don't remember what place we went to next.

Q. Was it the next time in that you were stopped? A. 1383
I just can't recall, whether it was the first time in or not.

Q. How long after the first time you were stopped did you first see Needelmann? A. The second time.

Q. The second time? A. You say from the first time?

Q. Yes, how long was it from the first time you were stopped to the time that you first saw Needelmann? A. I just don't recall.

Q. Was it a matter of weeks? A. Yes, I imagine it was.

Q. And do you remember what conversation you had with Needelmann the first time you saw him? A. Oh, he told me what the setup was, that we could not unload in New York City.

Q. Just what did he tell you? Tell us everything you can remember. A. He just told us we could not unload our own trucks; that we had to put a City man on to do the unloading; hire a New York man to unload it.

Q. Did he ask you if you were a member of any union? A. Yes. We finally got around to that.

Q. Well, what was said on that subject? A. Still it was
1385 no good in New York City.

Q. Who said that? A. The union man, Needelmann.

Q. Was anybody with him then? A. I just couldn't recall.

Q. Do you remember where that was? A. No.

Q. Did you pay him any money that time? A. Well, all the time—at the beginning we did not always pay him. Sometimes we got the broker to pay him.

Q. Do you recall any occasion when you did not see any of those men until you had unloaded part of the truck yourself? A. Yes, I recall one time, but I don't know what house it was at and I don't know who the man was either.

Q. When was that with respect to the time you were stopped? I mean with respect to the time you were first stopped? A. Oh, I can't just say if it was weeks or months
1386 after.

Q. Tell us the circumstances there. A. Well, we had the load unloaded, all but 75 cases of canned goods we had on, and I went around to another place with that there, and backed into the place, the platform, and they came around, a couple of fellows, and would not let us unload. So we paid them.

Q. How much?

Mr. Murray: May we have the identity of the man, if your Honor please?

The Court: Yes.

By the Court.

Q. Can you state who these two fellows were? A. No. It was more than two that day.

Q. Well, have you ever seen any one of them since? A. Not that I know.

Q. Have you ever seen any of them in company with the four men whom you have identified here? A. No.

By Mr. Marks. 1388

Q. How many were there altogether then? A. It was more than two. I just couldn't say. See, it has been a little while ago.

Q. Did you pay any of them any money? A. Yes, I had to.

Mr. Murray: I object, if your Honor please.

The Court: I will sustain the objection. Strike out the answer.

Q. Did you see any of them before that time? A. Before that time I was stopped there?

Q. Yes. A. Yes.

Q. When was the first time you had seen any of these four men? A. The four I picked out? 1389

Q. No.

The Court: We are talking about the four you saw when you had these 75 cases you were unloading. Had you ever seen any of the men who stopped then before that?

The Witness: No.

Q. Had you ever seen them after that? A. No. If I did I didn't know.

Q. Did they show you anything? A. No.

Q. Did they show you any kind of a book? A. Oh, they said they was 807 men.

Mr. Maguire: I object.

The Court: Strike it out. The question was if they showed you anything.

Q. Did they show you anything? A. Just a union book; that is all.

1391 Q. You saw the union book? A. Yes, they showed it to me.

Q. What was on the union book?

Mr. Boudin: I object to that.

The Court: I will allow it.

A. Their name, and the same as my book.

Q. What besides their names? A. 807.

Q. On all of them? A. Yes.

The Court: Did each man have a union book?

The Witness: Yes.

The Court: Did any of them wear buttons in their caps?

1392 The Witness: I imagine they did.

Q. Did you have any conversation with those four men that time? A. Yes, sir, we had quite an argument.

Q. Will you tell us what was said.

Mr. Maguire: I object to it.

The Court: I will allow it subject to its being shown here that it was said as far as these defendants were concerned in furtherance of a conspiracy.

if the jury find there was a conspiracy, and only as to the persons whom the jury find were members of the conspiracy.

Q. Tell us what was said. A. Well, they said we had to pay them to unload there, and I went in and asked the receiver and he said he did not know anything about that.

The Court: Strike out the statement about the receiver.

Q. Were they present when you talked to the receiver? A. No. I went in his office.

Q. Don't tell us what you said to the receiver. Just tell 1394
us what you said to these men and what they said to you. A. I told them I had practically unloaded and I didn't think it was necessary to pay them $9.42 to unload 75 cases.

Q. What did they say? A. That was the ruling, that a City man should unload.

Q. They told you that? A. Yes, sir.

Q. Tell us the entire conversation. A. So we argued around there and we were going to take——

Q. No, don't say you argued. Just tell us what you said and what they said. A. Well, they said we had to pay, and that is what we did.

Q. How many were there? A. It was more than two. Three or four. 1395

Q. How much did you pay? A. $9.42.

Q. Did they do any work on the truck? A. They unloaded.

By the Court.

Q. You mean you paid a total of $9.42? A. Yes, that is right.

Q. Or you paid $9.42 to each? A. No. A total.

Q. A total of $9.42. How many men assisted you in the unloading? A. They all helped. They helped each other.

By Mr. Marks.

Q. How long did it take to unload that truck? A. 15 or twenty minutes.

Q. And you paid $9.42 for that? A. Yes, sir.

Q. Do you remember any other occasion around the same period when you met any 807 men at the warehouse? A. No particular warehouse that I know of, recall.

Q. Do you remember any occasion around that time
1397 when you met them at the exit of the Holland Tunnel? A. Yes.

Mr. Maguire: I object to the characterization.

The Court: Is there any objection?

Mr. Maguire: Yes.

The Court: What is it?

Mr. Maguire: The objection was that the first question which was followed by this last question characterized them as 807 men. I object to it.

The Court: That objection goes to the previous question. I will sustain it. The objection is quite late.

Q. During that period, Mr. Lescalleet, did you meet any men near the exit to the Holland Tunnel? A. Yes. I had
1398 met some of them at the tunnel.

Q. When? A. About the time—once they got acquainted with the truck.

Q. When was that? A. When they started catching us—

By the Court.

Q. Was that before or after this matter that you have testified to over at Austin, Nichols & Company in Brooklyn? A. After.

Q. How long after? A. Well, once they got to know our truck.

Q. Approximately how long after? Was it a matter of days or weeks or months? A. Well, weeks. I made stops at the tunnel there.

By Mr. Marks.

Q. As you drove out of the tunnel was your truck going fast or slow? A. Slow.

Q. At about what speed? A. 20 mile an hour.

Q. What happened? A. We stopped at the red light there and they came up and jumped on the running board and told you the story that you couldn't unload; you had 1400
to hire City men.

Q. What did you say? A. I told them we could unload her——

Mr. Maguire: I object; no identification.

The Court: I will allow it with the same restriction.

Mr. Maguire: Exception.

Q. What did you say? A. I told them we could unload our own load.

Q. You told them what? A. We could unload our own load. There was a little exchange and we would leave and they would follow.

Q. How? A. By car. 1401

Q. Where would they follow you to? A. Wherever we were going to.

Q. What happened when you got to your destination? A. Most of the time we always had to pay them.

Q. Just before you paid them what happened? A. They would out-argue you.

Q. How many were usually in these cars? A. They traveled from one to four.

Q. Did you ever have any discussion with these men about your union affiliations? A. Yes, sir.

Q. What was said on that subject? A. They started arguing it wasn't no good up here.

Q. It wasn't what? A. It wasn't recognized in New York.

Q. What did you say about the affiliations of your union, if anything? A. Well, we told them we paid our union dues the same as they did and the boss expected us to do the work because he was paying us to do it.

Q. Can you tell us whether or not your union rules permitted you to unload in New York City?

1403

Mr. Boudin: Objected to as calling for a conclusion.

The Court: I sustain the objection.

Q. Was there any conversation had about their union affiliations? A. (No answer.)

The Court: Do you understand the question?

The Witness: No.

The Court: Read the question.

(Question read.)

The Witness: Well, they had—the way it seemed to me——

The Court: No, not the way it seemed to you. The question was if anything was said.

1404

The Witness: They said that their union local was unloading trucks in New York City, and that no other union was permitted to unload.

Q. Are you finished with your answer? A. Yes.

Q. Approximately when did you first meet Needelmann? A. I imagine it was around November, 1937. That is when it was.

Q. When did you first meet Venditti? A. That is Tony?

Q. Yes, Tony. A. At the same time.

Q. Did you see them together? A. Yes, sir.

Q. More than once? A. Yes.

Q. How often? A. Well, they traveled together all the time.

Q. When did you first meet Randazzo? A. That is Frank?

Q. No, that is Bernard Randazzo. A. Well, I met him after I came down, where we pick up the union men now.

Q. Did there come a time when Needelmann worked on your truck? A. Yes.

Q. When was that? How long after you first met him? A. Months. 1406

Q. Months? A. Yes.

Q. Was it in 1937? A. No.

Q. Some time in 1938? A. I can't answer that. It may have been 1937, and it may have been 1938.

Q. Where did you usually meet Needelmann? A. Well, we always met him in Beach Street, Beach and Hudson.

Q. And did he go on your truck at that point? A. Yes.

Q. Did he drive your truck? A. No.

Q. Who drove it? A. I did.

Q. Did he accompany you to your consignees? A. Yes, sir.

Q. Who unloaded your truck? A. We did.

Q. Well, whom do you mean by "we"? A. Well, after we go to picking them up regular, we came in by ourselves then. Just the driver on the truck; no helper. Then the 1407 driver and him would unload.

Q. Do you remember seeing Needelman on one occasion in Unionville, New Jersey? A. Yes, sir.

Q. How long ago was that? A. About two years ago.

Q. Will you tell us what the circumstances were?

Mr. Murray: Now I object, if your Honor please, unless the time is made more definite.

The Court: Well, let us see if it can be made more definite.

Q. Well, do you know the month? A. The exact month? I would say March or April.

Q. Of 1938? A. Yes, sir.

Q. That is your best recollection? A. Yes, sir.

Q. Will you tell us what happened there? A. Well, they were there when we pulled in.

Q. Who are "they"? A. My helper and I.

Q. Who was there when you and your helper pulled in? A. Needelmann and Tony and some other fellow.

Q. Who was he, do you know? A. I don't know him.

1409

The Court: You don't see him here to-day, do you?

The Witness: I wouldn't recognize his face, no.

Q. Go ahead. What happened? A. And they thought maybe we were coming into New York.

The Court: No, no. Don't tell us what they thought. Tell us what they said.

The Witness: They asked where I was going to. I told them I was going to Connecticut and they wanted to see my papers and I showed them to them; my orders where I was going, and that convinced them I wasn't coming into New York.

1410

Mr. Murray: I move to strike it out.

The Court: Strike out "that convinced them".

Q. Just tell us what they said, Mr. Lescalleet. A. They just asked me where I was going.

Q. Yes? A. And I told them.

The Court: You told them you were going to Connecticut?

The Witness: Yes, sir.

Q. What did they say next? A. They said, "I thought maybe you were going to New York and was going to sneak in at night and get away from us."

The Court: Where was this? Unionville?

The Witness: Unionville.

The Court: Where is that?

The Witness: About 20 mile out of the City, Route 29.

Q. In New Jersey? A. Yes.

Q. What else was said by them? A. Well, I knew them at that time and we talked. No particular subject at all.

Q. Was that at a gas station? A. Yes, a gas station 1412
and diner.

Q. Now, what happened next? A. Well, one of the other trucks was there and they wanted some gas to come back to New York.

Q. Who wanted some gas? A. Needelmann.

Q. What did they do? A. They were going to draw it out of the truck.

Q. Just tell us what you saw Needelmann do. A. He had a can and he was going to draw gas out of the truck to put in the car to come home.

Mr. Murray: I object to that as not material to the issues.

The Court: I don't see what that has to do with 1413
it. I will sustain the objection. Strike out the answer.

Mr. Marks: If your Honor please, may I refer to page 11 of Indictment 102-395, which alleges that "These services, if any, rendered by the members of defendant union had been of relatively short duration and of a negligent and careless nature frequently resulting in substantial damage to the

trucks." I submit this evidence may be admissible as showing damage to the truck and property of the over-the-road operator.

The Court: On that basis I will exclude it. That relates, in my opinion, to some negligence growing out of the operation of the truck by one of the members of Local 807. Proceed.

Mr. Marks: That is precisely what the indictment alleges.

The Court: I know it does, but that is not what your proof purports to show at all. As I understand it, what you are trying to prove here is that
1415 one of these defendants was out somewhere in Jersey and wanted to get home and he proposed drawing some gasoline out of somebody's truck. Well, the laws of New Jersey could take care of that, if any such thing happened, but I don't see that it has anything to do with the——

Mr. Marks: Of course, the laws of the various states could take care of a lot of these things but they didn't.

The Court: Well, we can't write laws here. They write them in Congress. Proceed.

By Mr. Marks.

Q. Do you remember one day when you saw Needelmann
1416 in Austin, Nichols in 1937?

Mr. Murray: I object to the form of the question, if your Honor please.

The Court: He may answer yes or no.

A. Yes.

Q. Pardon? A. Yes.

Q. Will you tell us what happened on that occasion?

Mr. Murray: May I have the time fixed, if your Honor please?

The Court: Can you fix the time? What part of the year 1937?

The Witness: No.

Q Tell us what happened.

The Court: Now, one moment. When did that happen with relation to the first occasion when anybody stopped you from making a delivery at Austin, Nichols? How long after that?

The Witness: A month or so.

The Court: All right. You may testify. 1418

Q. Tell us what happened on that occasion. A. Well, after it was unloaded—they had unloaded my truck, a couple of them went over and unloaded another one.

Q. Who is "they"? A. Some of his buddies.

The Court: Well, was Needelmann there?

The Witness: Yes.

The Court: Did he participate in the unloading of your truck?

The Witness: That is right.

The Court: And did he participate in the unloading of the other truck that you referred to?

The Witness: The second outgoing load? 1419

The Court: Yes.

The Witness: Yes.

Q. How many were there altogether? A. Approximately three.

Q. Was the other truck a Pitzer truck? A. No.

Q. Do you know what company it belonged to? A. No.

Q. Did you hear Needelmann say anything about the other truck? A. Oh, he said he had to put a union man on, which they all said the same thing, the same as what they told me.

Q. What did Needelmann or those with him say about the second truck? A. They said they had to put a union man on, a City man on.

Q. Did they say who was getting paid for unloading the second truck? A. I don't know who was getting paid.

The Court: We will adjourn here until 10.30 tomorrow morning. I would like to see counsel in
1421 the morning at a quarter after ten in chambers here, and I will take up at that time the question of the witness whose cross-examination you, Mr. Boudin, requested be suspended and whom I directed to return Friday morning at 10.30.

Mr. Maguire: May I see your Honor now?

The Court: Yes, I will take that matter up.

(Discussion off the record between Court and counsel without the hearing of the jury.)

(Adjourned to April 19, 1940, at 10:30 A. M.)

New York, April 19, 1940,
10.30 A. M.

1422

TRIAL RESUMED.

The Court: Call the roll.

(The clerk called the roll of the defendants.)

The Clerk: Edward Weinheimer is not here, your Honor.

The Court: Will counsel for the defendants come up here just a moment?

(Conference at the bench between Court and counsel, not within the hearing of the jury.)

The Clerk: Edward Weinheimer?

Mr. Weinheimer: Here.

The Court: Now, on April 17th George W. Steller was examined as the fourth witness in this case, and he was cross-examined by Mr. Murray. At the conclusion of Mr. Murray's cross-examination Mr. Boudin requested a postponement of further cross-examination in order to have brought here certain records. I understand that the defendants now waive further cross-examination of George W. Steller. Am I correct in that?

Mr. Maguire: That is correct, your Honor. 1424

The Court: Well, he may be excused if he is here. Is he here? If he is here he may be excused. You may proceed with the examination of the witness on the stand.

ROY THOMAS LESCALLEET resumed the stand and further testified as follows:

Direct examination (continued) by Mr. Ennis.

Q. Mr. Lescalleet, do you recall that at the close of your testimony yesterday that you were discussing conversations you had with George Needelmann at this gas station in Unionville, New Jersey? A. That is right.

Q. And you placed the time in the spring of 1938? A. 1425
That is right.

Q. Now, confining yourself to the conversation you had with Needelmann about the operations of your own employer's trucks, will you tell me what Needelmann said to you? A. Well, he didn't say anything to me in particular. It was the other driver's truck that he was talking on. There was two trucks there, you see.

Q. Yes?

By the Court.

Q. To whom did the other truck belong? A. Pitzer.

Q. The same man? A. Yes, the same man I worked for. There was two trucks there.

By Mr. Ennis.

Q. What did Needelmann say about the other truck? A. He wanted gas to come back into New York.

Mr. Murray: Now, if your Honor please, that was stricken out yesterday, if I remember.

1427 The Court: What I struck out yesterday was the statement, as I recall, that he got some gas out of another truck. It was not disclosed whose truck it was. What the witness is being asked about now is the conversation that Needelmann had with somebody in the presence of the witness, and that I will allow.

Q. Do you remember what Needelmann said in your presence about getting gas? A. He needed gas to come back into New York——

Q. Just a minute. Don't state what he needed. Try and remember his words as best you can. What did Needelmann say?

1428 Mr. Maguire: Objected to as not within the issues.

The Court: I will overrule the objection.

Mr. Maguire: Exception.

A. In the first place, he looked at the orders to tell——

By the Court.

Q. What did he say? You were not asked what he did. What did he say? A. "Where are you going?"

Q. All right. And what did the driver reply, if anything? A. I was the driver, and when he asked me where I was going and I told him——

Q. You told us a moment ago that the conversation was with the driver of another truck. A. Yes, on the gas subject.

Q. And then Mr. Ennis asked you what the conversation was. What did Mr. Needelmann say to the driver of the other truck? Now, that is what you have been asked to tell us. A. That he wanted gas to come back to New York. 1430

Q. What reply, if anything, did the driver of the truck make? A. He said, "I am not giving no gas out; we need it ourselves."

Q. Did Needelmann say anything? A. He said they still needed gas and they were going to take it.

Q. Did he say they were going to take it? A. They did try——

Q. No, did he say that? A. Yes.

Q. He used those words, they needed gas and he was going to take it? A. Yes.

By Mr. Ennis.

1431

Q. Then what did he do? A. They were going to take it out of the tank.

Q. What were his acts? Describe and tell us how he moved about, what he did. A. They had a hose and a can——

By the Court.

Q. Who had? A. A man. I would not say which one it was that put the hose in the tank. There was three of them.

Q. Did Needelmann say anything? A. There was three of them. I don't know which one put the hose in the tank.

By Mr. Ennis.

Q. Were they companions of Needelmann? A. Yes.

Q. They were with him? A. That is right.

Q. And one of them put the hose in the tank? A. That
1433 is right.

Q. What did that man who put the hose in the tank then do? A. They started to siphon it out.

Q. How did he siphon it out? A. Through the hose into a can.

Q. Yes, and then what did he do? A. The other drivers kicked and then he quit.

Q. What did he say? A. He said, "You can have what you got there," and he said no; so they put the gas back in the tank.

Q. They put the gas back into the tank after the driver objected? A. That is right.

Q. Now, passing from that incident to what then happened at the station, do you recall any further conversa-
1434 tion between you and Needelmann, or further statement by Needelmann in your presence there about your trucking operations? A. No, because I left shortly.

Q. Did Needelmann there in your presence phone your employer?

Mr. Murray: I object. The question is leading and suggestive.

The Court: Sustained.

Q. After this gas episode, can you recall any further conversations with Needelmann or by Needelmann, or any further acts by him around that gas station with respect to the operation of your truck or the other truck of your employer?

Mr. Murray: I object on the ground that it has been already answered.

The Court: Overruled. He may say yes or no.

A. No.

Mr. Ennis: That is all, Mr. Lescalleet.

The Court: Cross-examine. 1436

Cross-examination by Mr. Murray.

Q. Did you have a chauffeur's license to operate a truck in the State of Pennsylvania? A. Yes, sir.

Q. How long did you have that license? A. Nine years.

Q. Did you have any plates— A. Beg your pardon. I didn't have a Pennsylvania license nine years. I had a license nine years but not Pennsylvania.

Q. Well, where else did you have a license besides Pennsylvania? A. Maryland.

Q. Had you lived in Maryland? A. Yes, sir.

Q When did you live in Maryland? A. I was born there and lived there until I was eighteen. 1437

Q. How long have you been operating trucks? A. Going on five years.

Q. When you were in Maryland were you a member of any union? A. No.

Q. And how many years did you operate a truck out of Pennsylvania before you became a member of a union? A. About a year.

Q. When did you begin to work for your present employer? A. Beginning of 1937.

Q. When did you become a member of a union? A. In 1937, fall.

Q. You began to work for your present employer around the first part of 1937, you say? A. No, it was before that.

Q. Well, when? A. I know it was the wintertime. I just don't know the month.

Q. Have you got a good or a bad memory? A. Well, things like that—I have other things to think of.

The Court: Well, this is the month of April.

The Witness: Yes.

The Court: In the year 1940. How long have
1439 you been employed by your present employer?

The Witness: Starting on five years. From 1936.

Q. When you started out from Pennsylvania on those occasions that you testified to, to make deliveries in New York, what time did you customarily leave Pennsylvania? A. In the afternoon.

Q. What time? A. Sometimes at dinner time. Sometimes it wouldn't be until 3 o'clock.

Q. By "dinner time" do you mean around noontime? A. Yes, sir.

Q What size truck did you drive? A. Tractor and trailer job.

1440 Q. How many tonnage in the truck? A. Well, when I first started it used to be eight tons.

Q. Well, in 1937 what was the tonnage of the truck? A. Around eight tons.

Q. Did you ever drive a truck higher than eight-ton tonnage? A. Yes.

Q. When you came to New York? A. Yes, sir.

Q. When was that? A. Now, at the present.

Q. Well, before June 1, 1938, did you drive a truck of more than eight tons? A. It was—what year?

Q. Before June 1, 1938. A. No.

Q. How many tons did you customarily carry on the truck? A. At the beginning, eight tons. In the last year I am hauling ten and twelve.

Q. What kind of merchandise did you truck? A. Canned goods mostly.

Q. Heavy goods, was it? A. Some cases were heavy and some cases were small, light cases.

Q. What would you say was the heaviest case that you trucked? A. Around forty-eight pounds.

Q. Where did you pick up your load? A. At the home town, Biglerville, Pennsylvania.

Q. If you started out, say, from Biglerville, Pennsyl- 1442
vania, at 3 o'clock in the afternoon, what time would be required for you to reach New York, say, Austin, Nichols warehouse? A. It takes from eight to nine hours to drive in.

Q. Was that continuous driving? A. Well, there would be a stop to eat.

Q. How long would you stop to eat? A. Well, long enough to eat.

Q. Well, how long was that? A. It depends where you stopped. Some places we could go right in and eat right away. Some places we had to wait. Sometimes twenty minutes; sometimes an hour.

Q. What time ordinarily did you reach New York with your truck? A. It depends on when you leave.

Q. Well, if you left at 3 o'clock in the afternoon what 1443
time did you reach New York? A. 12 or 1 o'clock.

Q. 1 o'clock in the morning? A. Yes.

Q. If you reached New York at 1 o'clock in the morning were you accustomed to delivering your merchandise? A. Well, most of the time whenever we got a good start we always stayed at Unionville and slept out there; out where we gas up.

Q. Well, were there occasions when you left your town in Pennsylvania and reached New York at one or twelve in the morning where you didn't stay over at Unionville? A. Yes, there were some occasions.

Q. Well, when you got to New York, say, at one in the morning, what did you do then? A. Slept.

Q. What time would you get up to deliver your load? A. The time when we were unloading ourselves?

Q. Any time. A. Well, they would call us at the warehouse when they opened up.

Q. What time did they ordinarily open the warehouse, say, of Austin, Nichols? A. I don't know whether it was
1445 seven or eight.

By the Court.

Q. When you came into New York, say, at 1 or 2 o'clock in the morning or 12 or 1 o'clock, did you go right to the warehouse? A. No, not always. When we came right into New York, we did, yes.

Q. That is what I am asking you. You went right to the warehouse? A. Yes.

Q. When you said they called you when they opened up, what did you mean by that? A. They would wake us up to unload.

By Mr. Murray.

1446

Q. Where did you sleep on those occasions? A. On the truck.

Q. And the truck was parked near Austin, Nichols, was it? A. If that is where we were going.

Q. Did you ordinarily when you made the trip from Pennsylvania get into New York before seven in the morning? A. Yes.

Q. Was that a rule, that you did get in before 7 o'clock in the morning? A. That was the idea, of trying to do so.

Lots of times we didn't get in there when we slept too long at Unionville or something.

Q. Did you always come into New York through the Holland Tunnel? A. At first, yes.

Q. Well, at first you consumed what period of time, say, up to 1937? A. We had been traveling the ferry for better than a year.

Q. Well, between December 1, 1936, and June 1, 1938? A. By tunnel.

Q. Did you always use the tunnel? A. Yes, sir.

Q. Did you always get into the Holland Tunnel before 7 o'clock in the morning? A. No.

Q. Did you ordinarily get into the Holland Tunnel be- 1448
fore 7 o'clock in the morning? A. No, not always.

The Court: Ordinarily he said.

The Witness: If we came straight to New York we did. If we slept at Union we didn't.

Q. How frequently on an average did you stop at Union? A. We stopped every trip coming in, but we slept most of the time.

Q. In Union? A. Yes.

The Court: As I understand it, you either stopped at Unionville and slept there?

The Witness: Yes.

The Court: Or you came through the tunnel and 1449
went to the place where you were to make your first delivery and slept there until you were awakened?

The Witness: Yes, that is right.

Q. When you started out from Biglerville did you make the pickups yourself of the merchandise or was it all loaded on your truck in advance at Biglerville? A. Sometimes it was loaded up; sometimes we had to load it.

Q. Well, did you pick up the loads more frequently than you found the loads on your truck at Biglerville? A. Yes, sir.

Q. Where did you go to pick up the loads before you started for New York? A. At Biglerville.

Q. Just in Biglerville? A. Yes.

Q. You picked up no loads outside of Biglerville? A. Well, on this side of Terminal there is a cannery, the Knause Corporation.

Q. You mean in New Jersey? A. No. It is about three miles north of Terminal towards New York; on the road to New York.

1451 Q. Beg your pardon? A. On the road to New York. We picked up some canned goods there.

Q. Is that three miles outside of Biglerville or three miles outside of New York? A. Three miles north of Terminal.

Q. Where is Terminal? A. At Aspers.

The Court: Well, Aspers is near Biglerville.
The Witness: Yes, four miles.
The Court: That is in Adams County, isn't it?
The Witness: Yes.

Q. When you got into the Holland Tunnel in New York, when you hadn't slept in Unionville, Pennsylvania, what time would you ordinarily reach the Holland Tun-
1452 nel? A. Unionville, New Jersey, that was where we slept.

Q. Or Unionville, New Jersey? A. What time did we reach the tunnel?

Q. Yes. A. Well, in the morning, say, from six to eight, if we didn't sleep.

Q. What time did the warehouse open? A. Providing we got a late start——

Q. What time did the warehouse open? A. From seven to eight most of them opened.

Q. When did you sleep on your truck near the warehouse? At what hours? A. At that time we wouldn't sleep until we was all loaded.

The Court: No. He means when you didn't sleep at Unionville.

The Witness: Oh.

The Court: Isn't that what you mean, Mr. Murray?

Mr. Murray: Yes, your Honor.

The Witness: If we didn't sleep at Unionville we would be in New York early and we would sleep on the truck. 1454

Q. Outside of Austin, Nichols? A. Not always there.

Q. Where else? A. That was only one place we hauled.

Q. When you got into the Holland Tunnel, for instance, before 7 o'clock in the morning, no members of Local 807 met you at that time, did they? A. They didn't? Yes, they did.

Q. What time did they meet you? A. In the morning.

Q. Yes. At what time before seven in the morning was that that they met you? A. They would meet you there at six.

Q. If you got in at four did members of Local 807 meet you at four? A. No.

Q. Or five? A. I never was caught at 4 o'clock at the tunnel. 1455

Q. Beg pardon? A. I never was caught at 4 o'clock at the tunnel.

Q. I am asking you about members of Local 807 meeting you. A. Yes.

Q. I didn't ask you when you were caught. A. They never met me there at 4 o'clock.

Q. How often while you were driving for your employer before June 1, 1938, were you met by members of Local

807? A. I just can't tell you how many times they ever met us.

Q. Well, have you any idea? A. No, I have no idea how many times.

Q. Have you got any idea how many times a week? A. Some weeks he would come in he would be caught once; other times he came in twice a week and he would be caught, and the next week he might not be caught at all.

The Court: When you say "he," you mean yourself?

The Witness: You mean—No. 807, is that what you mean?

1457

The Court: You said sometimes he would come in.

The Witness: Well, whoever it may be, the particular driver.

Mr. Murray: May I have the characterization "caught" stricken out because it is not responsive?

Mr. Cahill: I submit it is responsive. It is the witness' terminology.

The Court: Denied.

Mr. Murray: Exception.

Q. How many times did you pay any member of Local 807 for any services connected with your delivery? A. You mean by cash?

1458

Q. I don't care how you paid them? A. Ten or twelve times.

Q. You say ten or twelve times? A. Ten or twelve.

The Court: Now are you speaking of the times when you yourself were present?

The Witness: Yes.

Q. You personally paid them ten or twelve times in a period of approximately a year and a half or two years? A. No.

Q. Covering what period of time? A. Until Mr. Pitzer got to sending checks up to them.

Q. When was that? A. He started sending checks up, I guess it was in 1938.

Q. Am I precise in saying between December 1, 1936, and some part of 1938 that only on about a dozen occasions you paid members of Local 807? A. Sometimes I let the broker pay it.

Q. What broker? A. The broker for C. H. Musselman & Company. 1460

Q. What is his name? A. Houck.

Q. Where is his place of business? A. 100 Hudson Street.

Q. Do you know how often he paid them? A. No.

Q. Say in a period from December 1st to June 1, 1938; December 1, 1936. A. I wouldn't know how many times.

Q. Now, would you be good enough to tell us the greatest number of times from December 1, 1936, to June 1, 1938, that you personally paid members of Local 807 for any service connected with your shipments? A. Myself I would say I paid them around ten or twelve times.

Q. Do you know the times? A. No.

Q. Do you know the dates? A. No.

Q. Do you know the years? A. Sure. 1461

Q. What years? A. 1937.

Q. Not in 1938? A. Yes.

Q. When in 1938? Up to what time? A. Well, the beginning of 1938 some time.

Q. How far extending beyond the beginning of 1938? A. The first part, the first month.

Q. You mean the first six months? A. The first month.

Q. Beg pardon? A. The first month.

Q. You mean January of 1938? A. Yes. I just don't know when Mr. Pitzer started sending in the money by check to them.

Q. Did you get receipts each time you were paid? A. Yes.

Q. Did the members of Local 807 volunteer to give you the receipts or did you demand them? A. Well, they would give it to us to show that we paid the money so we could get our money from the boss.

Q. What did you do with those receipts? A. We took them back and handed them in in the office.

Q. Do you know whether or not they are still in exist-
1463 ence? A. I could not say.

Q. Have you seen them since you handed them into the office? A. No.

Q. Now, when you left your place in Pennsylvania to come to New York and did not sleep in Unionville, New Jersey, but slept in your truck near Austin, Nichols, how long would that journey take you from your headquarters in Pennsylvania to Austin, Nichols? A. Well, that would run, from home, about nine hours.

Q. Would that be nine hours of continuous driving? A. One stop for eating.

Q. Except stopping for eating? A. Yes. That would be one stop included.

Q. And how many deliveries did you ordinarily have in New York City after you reached here? A. Average?
1464 Q. Yes, on an average, the ordinary trip. A. Two or three.

Q. And where were they delivered? Where were those deliveries made? A. That is a little hard to say; Brooklyn, Long Island, New York.

Q. Brooklyn? A. Yes.

Q. Where in Brooklyn? A. Austin, Nichols.

Q. Where is their place in Brooklyn? A. Kent Avenue it was.

Q. Beg pardon? A. Kent Avenue it was.

Q. Kent Avenue? A. Yes.

Q. And then you delivered to Austin, Nichols in New York City? A. No.

Q. Down the lower section of the City? A. I don't know where it is now.

Q. Did you deliver at any other depots besides Austin, Nichols? A. Francis H. Leggett.

Q. Any place else? A. Wallace, Burton & Davis.

Q. Where is that? A. Washington and Greenwich, I think.

Q. Any place else? A. J. Cane.

Q. Where is that? A. I don't know the street. 1466

Q. Beg pardon? A. I said I don't know the street.

Q. Is it down the lower section of Manhattan? A. Yes.

Q. Any place else? A. Oh, I can't name them all.

Q. Now, after your nine-hour trip to New York, how many more hours were consumed in making the deliveries ordinarily? A. Oh, sometimes we could not unload when we got there. If they loaded their own trucks first we would have to wait.

Q. Well, could you strike an average as to how many hours it would take? A. To unload?

Q. Yes. A. Two hours.

Q. So that is eleven hours, is it, consumed from the time you left Pennsylvania in your traveling and your deliveries in Manhattan? A. Yes. 1467

Q. About eleven? A. About ten or eleven.

Q. What time, say, if you left Pennsylvania at 5 o'clock in the afternoon, reached New York and made your deliveries, what time would you start back to Pennsylvania ordinarily? A. A lot of times it would depend on how we felt. If we were sleepy we would sleep some more.

Q. Sleep where? A. Unionville.

Q. Well, assuming you left Pennsylvania and you did not sleep at Unionville and you made your deliveries in New York, when would you ordinarily start back again for Pennsylvania? A. We would go out to Unionville and sleep for a time and then go back.

Q. No. Where did you sleep? A. Unionville, how where we gassed up.

Q. You mean on your trip back? A. Yes.

Q. Well, how long would it take to get from New York on your return trip before you reached Unionville? A. Not over an hour.

Q. Where did you sleep in Unionville? A. They have
1469 bunks out there; beds there at the station.

Q. Well, have you ever driven your truck and made your deliveries and started back to Pennsylvania where you worked continuously for twenty hours? A. We used to; when we had two drivers on we did that.

Q. Yes. Did you ever work continuously for thirty hours? A. No.

Q. Well, did you— A. Yes, pardon me. It would take more than that time to come in, make your deliveries and get back.

Q. Well, I asked you if you ever worked continuously for thirty hours? A. One man, no.

Q. With a driver on your truck did you work continuously for thirty hours? A. Driver and helper, yes.

Q. I mean a helper. A. Yes.

1470 Q. Did you work longer than thirty hours at any one stretch? A. Myself, no.

Q. I mean when you had a helper. A. Yes, when I had two fellows on the truck.

Q. What was the longest time you worked with two helpers on the truck? A. I don't know what the longest was.

Q. Beg pardon? A. I don't know just what the greatest amount of hours might have been.

Q. Well, starting with an approximation of thirty hours, can you tell us whether or not you worked longer than thirty hours at one stretch with either one or two helpers on the truck? A. Yes, I have worked longer than thirty hours already, but it was not all a New York trip.

Mr. Ennis: If the Court please, may the time be fixed for this occasion?

The Court: Yes. I think it is important to say whether this occurred within the period from the 1st of December, 1936, to the 1st of June, 1938.

Q. Mr. Witness, any inquiry I make of you concerning any incident is directed to the time between December 1, 1936, and June 1st of 1938, and not before December of 1936 and not after June of 1938. Have I made myself clear? A. You mean to say if I worked more than thirty hours between 1936 and 1938? 1472

Q. Between December 1, 1936, and, say, June 1, 1938; about eighteen months. A. No, because we had always helpers at that time. We did not drive——

Q. My question is——

Mr. Cahill: May he finish the answer, if your Honor please?

The Court: Yes, let him finish his answer.

A. (Continued) We always had helpers and we took turn about on driving. 1473

Q. My question is directed as to whether or not you with your helper or your two helpers between you or among you operated your truck for more than thirty hours? A. The truck——

Q. I mean plus your deliveries and your pickups. A. You mean the truck on the move more than thirty, or one man driving more than thirty?

Q. Either you or one assistant or helper, or two, whether you operated more than thirty hours. A. All together we did.

Q. Well, what is the greatest length of time, at any one time between the dates I have mentioned, that you ever operated beyond thirty hours? A. Whenever we took our upstate trip or something, we would operate more than thirty, because it would take longer to get there. The New York trips would not.

Q. How many trips a week on an average did you make from your base in Pennsylvania to New York? A. I don't think I ever drove over two a week.

1475 Q. Well, if you did not drive more than two a week to New York and return to Pennsylvania, did you drive other places besides to New York? A. No, not then; not the same week.

Q. Well, if you drove twice to New York and returned to Pennsylvania, did you do any other work that week? A. No.

Q. Well, now, have you worked more than forty-eight hours in any one week?

Mr. Ennis: I object, your Honor. That is not within the issues.

The Court: Sustained.

Q. When did you join the union in Pennsylvania? A.
1476 November, 1937.

Q. What was the number of the local? A. 430, York.

Q. And when you joined the union did you know that there were certain conditions laid down for members of the union in respect to their employment?

Mr. Ennis: I object to that, your Honor; that is immaterial.

The Court: I will allow him to say whether he knew or not.

A. Well——

By the Court.

Q. Did you know? A. It did not seem to make much difference with that local——

Q. No; did you know whether there were? A. Yes.

By Mr. Murray.

Q. Did you know that when you joined the union that you agreed not to work more than forty-eight hours in any one week? 1478

Mr. Ennis: I object, your Honor, to that question.

The Court: Sustained.

Mr. Murray: Exception.

Q. Did you know when you joined Local 430 in Pennsylvania that one of the agreements that you made was—

Mr. Ennis: Same objection to this line of testimony, your Honor.

The Court: I will sustain the objection.

Mr. Murray: Your Honor, I would like to finish the question. 1479

The Court: That is not the way to prove it.

Mr. Murray: Your Honor, I would like to finish the question.

The Court: No. I assume you are going to read something to him purporting to be a rule or a regulation.

Mr. Murray: Well, I was going to read the sense of it, your Honor, but not precisely.

The Court: Well, I will exclude it.

Q. When did you first meet Needelmann? A. In 1937, I guess it was.

Q. What month? A. I can't say.

Q. Have you got any idea when you met him, what time of the year? A. Well, I don't know if it was when we met him when we joined the union, or whether we met him before that.

Q. Have you got any idea of what month of what year
1481 that you first met Needelmann? A. No, I don't know the month. 1937 was the year.

Q. Do you know what part of 1937? A. No.

Q. Have you got any idea? A. Unless it would be when we joined the union; in November that would have been, but I would not say definitely.

Q. When did you ever pay Needelmann any money for any services connected with your truck? A. When he started unloading us; we paid him in 1937.

Q. When in 1937? A. I don't know when it was for sure.

Q. How many times did you ever pay Needelmann? A. Ten or twelve times.

Q. Needelmann alone, is that right? A. Well; him or Tony, whichever one worked. They would travel together.
1482 Q. How many times did you pay Tony? A. Well, I paid the pair of them about ten or twelve times, not Needelmann just alone. They were working together.

Q. You mean you paid both of them $9.42? A. No, whichever one would unload.

Q. Were your payments to both Needelmann and Tony inclusive of the twelve times you made payments? A. Yes.

Q. Do you know how many times you paid Tony? A. No.

Q. Do you know when you paid him? A. When he unloaded the truck; that is all I know. I don't know no dates.

Q. Do you know what month it was? A. No, not for sure.

Q. Do you know what year it was? A. In 1937.

Q. When did you last pay him? A. When Pitzer started sending the checks in. I don't know when that was.

Q. Do you know when you last paid him? A. No.

Q. Do you know when you last paid Tony? A. No. Pitzer, he started to pay him, and I just don't know what 1484
month he started to pay him in.

Q. Have you got any idea what month you stopped paying Tony? A. No.

Q. Now, you were asked by the District Attorney yesterday, I think, whether or not after Local 807 assisted in your unloading, whether or not you any longer had a helper coming in from Pennsylvania on your truck; do you remember that? A. I think there was something said. Well——

Q. Do you remember that? Do you remember being asked any such question? A. No, I don't recall.

Q. Well, when you did make payments to members of Local 807 for unloading, did you still have the helper who rode in with you from Pennsylvania? A. When we were 1485
just paying him ourselves, we did.

Q. Beg pardon? A. I mean, whenever we came in and got caught by them, we had to pay him; we had a helper then; but when Pitzer started sending the money in to them weekly, then we would come in by ourselves.

Q. Well, do you know whether or not Pitzer signed a contract with Local 807? A. I don't know.

Mr. Ennis: Objection, your Honor.

The Court: Overruled.

Q. Well, after Pitzer began paying the money, Pitzer being your employer, did you then have a helper on your truck as you rode in? A. After he started paying them, no.

Q. You drove alone, did you? A. Yes.

Q. And did you drive back to Pennsylvania alone? A. Yes.

Q. Did you get the same wages when you drove alone as when you had a helper?

Mr. Ennis: Objection, your Honor.

The Court: I will allow it.

A. Well, we got more money by ourselves.

1487 Q. How much more money did you get when you drove alone? A. $2 to $4.

Q. A trip? A. Yes.

Q. What did your helper ordinarily get?

Mr. Cahill: I object to this, your Honor, as not being within the scope of the direct examination.

The Court: I will sustain the objection.

Mr. Murray: Your Honor, my recollection is that this witness was interrogated along those lines by the prosecution attorney yesterday, and that is why I have been following it up.

The Court: Was there anything brought out yesterday in respect to what helpers were paid?

1488 Mr. Murray: No, your Honor.

The Court: I sustain the objection.

Mr. Murray: But the inference was left.

The Court: Proceed.

Q. When you first met any member of Local 807 when you came to New York who was your helper? A. I had different helpers.

Q. On the first occasion what was the name of your helper? A. On the first occasion I can't recall which one.

Q. What was the name of your helper on any occasion when you say that you had conversations with members of Local 807? A. Merle Kroschar.

Q. When did he work as a helper any time that Local 807 men talked to you? A. He was working with me in 1937.

Q. When in 1937? A. He started in the beginning of 1937, I guess, and he worked with me up till I just don't know when; the first part of 1937.

Q. Is he still employed by your concern? A. No.

Q. Can you give me the name of any other helper who worked with you and who was present with you, you say, when members of Local 807 talked to you in New York? 1490
A. Well, I had a lot of helpers. I did not always have the same one there.

Q. I know. A. But it is just hard to say the certain times when they were along.

Q. Well, you have told, have you not, this jury of specific instances in which some members of this union talked to you, is that right? A. 807 men?

Q. Yes. A. Yes.

Q. You testified yesterday, did you not, that one of these men threatened that if he was not permitted to assist in the unloading that you would find your truck in the river or some such place? A. No, no one ever told me that.

Q. No one ever told you that? A. No.

Q. Did anyone from Local 807 ever strike you? A. No.

Q. Did any member of Local 807 ever threaten to strike 1491
you? A. No.

Q. Did any member of Local 807 ever do any damage to your truck? A. No.

Q. Did you ever make a complaint to the police here about any member of Local 807? A. Well, when they first started I tried to get the police to protect, and they says—

Q. Well——

Mr. Cahill: Just a moment. May he finish, please, your Honor?

The Court: Have you finished?

The Witness: No.

A. (Continued) He said, "What can I do about it? I am working here."

Q. Whom did you see? A. An officer.

Q. What was his name? A. I don't know him.

Q. Where did you see him? A. Wherever we was unloading at.

Q. Where? A. We were stopped at a lot of places.

1493 Q. Well, can you tell me one place that you talked to an officer, a police officer? A. It is hard to say. It might have been a dozen places. That is some time ago.

Q. Can you give me the name of any police officer you ever talked to about it? A. I am not saying any particular place.

Q. What is the answer, please? A. I am not saying any particular place.

Q. Can you give me the number of any police officer that you ever talked to? A. No.

Q. Can you tell me any place where you ever talked to a police officer? A. No.

Mr. Murray: That is all.

The Court: Any further cross-examination?

1494 Mr. Maguire: Would your Honor bear with us just a moment?

The Court: Yes.

Cross-examination by Mr. Maguire.

Q. Now, you say that in November of 1937 you joined Local 430 of York, Pennsylvania; is that right? A. November, 1937, right.

Q. Now, when you joined the union what did you do? Did you go to the office in York, Pa.? A. No, the man came up after us.

Q. Was your employer present at the time that you arranged to join the union? A. No.

Q. Now, has it been the practice for your employer to pay the dues to the union office? A. No.

Q. Have you since November, 1937, attended any meetings of Local 430? A. Yes.

Q. When did you last attend a meeting of 430?

Mr. Ennis: I object, your Honor, as to his attendance at union meetings.

The Court: Overruled. 1496

Q. When did you last attend a meeting? A. I don't know. It has been a good while ago. I have not even belonged since last November—last summer some time.

Q. As a matter of fact, you have not belonged since last October; isn't that accurate? A. I will have to look to tell you (looking at book). November I was paid up.

Q. And as far as your membership in your union is concerned now, you are suspended, are you not? A. Well, I was not working for awhile, and I wrote in for a withdrawal card, see?

Q. Did you get a withdrawal card? A. No, I never heard anything about it; so I went down one day——

Q. Did you—— 1497

Mr. Cahill: May he finish, if your Honor please?

The Court: No.

Q. Did you get a withdrawal card? Do you hold a withdrawal card now? A. No.

Q. You say you joined the union in November, 1937. When was the first time after that that you attended a

meeting? A. The first time—oh, I just can't say when the first time was.

Q. Well, in the period, November, 1937, until you got out, to November, 1939, how many union meetings did you attend? A. Two.

Mr. Cahill: If your Honor please, I press the objection. It is immaterial.

The Court: Overruled.

Q. You attended two meetings, is that right? A. Yes.

Q. Can you tell us how many of those meetings—whether or not the two meetings were held in 1938, the ones that
1499 you attended? A. Yes, it was 1938 that I was attending.

Q. Now, attending those meetings you did discuss the rules and regulations of the union with reference to wages, hours and conditions of the members of that union, did you not?

Mr. Cahill: I object, your Honor.

The Court: I will let him answer yes or no.

A. No. They was always arguing about something else.

Q. Did you ever make a complaint to any representative of the union or officer of the union with reference to the number of hours that you were working each week in the period of 1937?

Mr. Cahill: I press the objection.

1500 The Court: Objection sustained.

Mr. Maguire: Exception.

Q. Can you tell us the name of the president of the union? Do you recall that? A. Not now.

Mr. Maguire: That is all.

The Court: Any redirect?

Mr. Ennis: Yes.

Redirect examination by Mr. Ennis.

Q. Mr. Lescalleet, going back to the time you drove into New York before you picked up 807 men, did you or did you not have a helper with you?

Mr. Maguire: That I object to, if the Court please.
The Court: Sustained.

Q. When you drove into New York before you picked up 807 men were you alone in your truck?

Mr. Maguire: I object to it.

A. No—

1502

The Court: Sustained.

Q. At that time before you picked up 807 men in 1937, about how long do you say that the average trip from Biglerville to Unionville, where you stopped over or slept over, as you stated, took; how long did that take?

Mr. Maguire: I object.
The Court: I will allow it.
Mr. Maguire: Exception.

A. Not over 8 hours.
Q. Not over 8 hours? A. No.
Q. Did you drive the whole distance yourself? A. After 807 began to unload us?

1503

Q. No, before 807. A. No.
Q. Who drove part of the distance? A. My helper.
Q. Did you divide up the 8 hours between you? A. Yes.
Q. More or less equally? A. That is right.
Q. In that same period on your trip back from New York, or after you gassed at Unionville, back from Unionville to Biglerville, did you drive the whole trip alone? A. No.
Q. Did your helper drive part of the trip? A. Yes.

Q. Now, going to the period after you began to pick up 807 men, did you during that period have a helper with you? A. When we picked them up regular, we did not have.

Q. You did not have? A. That is right.

Q. Did you drive the whole 8 hours from Biglerville to Unionville and into the City yourself? A. Yes.

Q. Did you drive the entire trip back by yourself? A. Yes.

Mr. Ennis: That is all.

(Witness excused.)

1505 The Court: Next witness.

RICHARD E. NOLDER, residing at Grampian, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Nolder, by whom were you employed at the beginning of 1937? A. H. Earl Pitzer.

Q. H. Earl Pitzer? A. That is right.

Q. In what capacity were you employed by him? A. As a truck driver.

1506 Q. Between what points did you drive trucks for Pitzer? A. From Biglerville to New York and about four other states, I guess, or five.

Q. You did drive trucks from Biglerville to New York City? A. That is right.

Q. Now, through what road did you enter New York City? A. 22 and 29. Came through Holland Tunnel.

Q. In 1937? A. 1937.

Q. Did you unload the trucks yourself? A. Yes.

Q. You did? A. Yes.

Q. Did any time occur when you did not unload the trucks yourself? A. In the early part of 1937, the City men in New York City here, they began to ask us to put on a City man to unload our trucks.

By the Court.

Q. When was that? A. In 1937.

Q. What part? A. Well, in the early part of 1937.

By Mr. Ennis.

Q. Where did you meet these City men who asked to unload your truck? A. Mostly—— 1508

Mr. Murray: I object, if your Honor please, on the ground that it is unconnected with any issue here.

Mr. Ennis: I will withdraw the question.

Q. Mr. Nolder, do you now know the man who first asked you to unload your truck? A. No. I don't know him personally. I know him now—some of them.

Q. Well, do you know now at the present time the man who first asked you to unload the truck? A. Yes.

Q. What is his name? A. George Needelmann.

Q. Will you stand up and see if you can identify that man in this room? A. (Standing) The man with the green sweater on (indicating). 1509

Q. Over on that side of the room (indicating)? A. Yes.

Q. Will you state what row he is in?

The Court: Well, let him step down and indicate the person. That will save time.

(Witness steps down and indicates.)

The Court: Call the name George Needelmann.
The Clerk: George Needelmann.
(A man stood up.)
The Court: Is this the man?
The Witness: Yes.
The Court: Come back to the stand.
(Witness returns to stand.)
Mr. Ennis: May the record indicate that he
The Court: I think it does, but it may.
Mr. Ennis: All right, your Honor.

Q. Do you recall where you first saw George Needelmann? A. I met him at one of the warehouses that we
1511 haul to.

Q. Do you remember what warehouse it was? A. No, I don't.

Q. Do you recall the circumstances under which you met George Needelmann?

Mr. Murray: I object, if your Honor please.
Mr. Ennis: I withdraw the question.

Q. Do you recall the time when you first met George Needelmann? A. Well, it was back to the time—we was pulling up to a place to unload——

Q. The time.

1512 The Court: No, no. Do you remember what date it was?
The Witness: No.

Q. Do you remember what year it was? A. 1937.

Q. Do you remember what month it was? A. No.

Q. Do you remember what season of the year? Was it in the early part of the year or the late part? A. Early part of the year.

Q. Early part of the year? A. Yes.

Q. You don't remember the warehouse at which you first met him? A. No.

By the Court.

Q. Well, were you driving a truck? A. Yes.

Q. And you saw Needelmann? A. I was stopped——

Q. No, you saw him? A. Yes.

Q. Was there anyone with him? A. Yes.

Q. Do you know the names of any of the persons with him? A. No.

Q. Did you ever find out who they were? A. Yes.

Q. Did you ever see any of them later? A. Yes. 1514

Q. Do you see any persons in the court room now who were with Needelmann upon that occasion?

Mr. Ennis: You may step down again, if you wish.

The Witness (stepping down): No, I don't believe I do.

The Court: All right.

By Mr. Ennis.

Q. What did Needelmann first say to you? A. Well, I was asked to put a City man on the truck.

Q. What did he say? Did he say, "Put a City man on the truck"? A. He asked—— 1515

The Court: Don't put words in his mouth.

Mr. Ennis: I am sorry, your Honor; I should not have done that.

A. (Continued) "If you want to unload this truck you will have to put a City man on."

Q. What did you say to him? A. I said I never had before, and he said, "You will have to start putting City men on."

Q. What did he answer?

The Court: No, that he what he said.

Mr. Ennis: I understood that is what the witness said, your Honor.

The Court: No.

Mr. Ennis: Will you read the last question and answer?

(Last question and answer read.)

1517 Q. What did you then say to him? A. I just don't recall the words but we talked there and tried to reason things out, and the shipping clerk would not receive the stuff so we had to put a City man on.

Q. Did he say anything else to you, Needelmann? A. Well, other times that I saw him——

Q. No, we will stick to this time first. A. I won't say that Needelmann is the first man that ever stopped me, I can't say that.

Q. But Needelmann did stop you in early 1937? A. Yes, he has stopped me.

Q. And you remember no more of the conversation at this first time? A. Well, he just demanded that we put a City man on, and the shipping clerk—he then told the ship-
1518 ping clerk to put a City man on.

The Court: Well, he told you you had to put a City man on?

The Witness: Yes.

The Court: What did the City man do?

The Witness: He helped unload the truck.

Q. Did you help the City man unload the truck on that occasion? A. Yes.

Q. When Needelmann said you had to put a City man on, was he the man who helped you unload the truck or another City man? A. It was a colored boy.

Q. A colored boy; not Needelman? A. That is right.

Q. Did you hear any conversation at that time between Needelmann and the colored boy? A. No. He said he would work the truck.

Q. Needelmann told you—— A. No. He said to this other fellow, "You work this truck."

Q. Needelmann told the colored man to work the truck? A. Yes.

Q. Did the colored man reply? A. He just got on the truck and began to work. 1520

Q. With you? A. Yes.

Q. What did Needelmann do? Did he help? A. No.

Q. Did you give Needelmann any money on that occasion? A. No.

Q. Did you give the colored man any money? A. It was arranged.——

The Court: No. Did you give the colored man any money?

The Witness: No.

Q. Did you discuss at that time the payment with Needelmann or the colored man? A. Yes.

Q. What did you say? A. Well, I said that I didn't have the money, and they arranged it through the broker. It 1521 was arranged through the broker.

Q. Just say what the conversation was. What did either one of them reply when you said you didn't have the money? A. I told the guy I didn't have the money and he said, "Well, you can call your broker and get it that way." So I called the broker and he was paid through the broker. The warehouse—they arranged—the broker said he would have it arranged. That is all I know.

Q. When the colored man said to you, "Call your broker," you did so? A. Yes.

Q. Did the broker come over to the truck? A. No.

Q. Well, was any money paid before your truck was unloaded? A. No.

Q. Did the colored man or Needelmann talk to the broker in your presence? A. No.

Q. Did you talk to the broker in their presence? A. No.

Q. Do you recall any other occasion upon which you spoke to Needelmann? A. Yes.

Q. Can you fix the time of that conversation? A. No.

Q. Can you fix the year? A. 1937.

1523 Q. In 1937? A. Yes.

Q. The early or later part? A. Well, it was about—this run from the early part until the middle part of 1937.

Q. Did you have one or more or several conversation in that period with Needelmann? A. I had a few. About three or four, I guess, anyway.

Q. Now can you tell us the places you had these three or four conversations? A. I believe at Granowich's.

Q. Can you spell that? A. No.

Q. Can you recall the conversation you had at that place with Needelmann? A. I would have to put a City man on, and we always tried to keep from putting a City man on. There was always two of us men on the truck.

Q. Well, restrict yourself to what was said by you and by Needelmann. A. He said there had to be a City man put

1524 on. If there wasn't anything could happen to me or the truck.

Q. Will you repeat that answer? A. Anything could happen to the boys or the trucks.

Q. Did Needelmann say that? A. Yes.

Q. Do you recall any other occasion in which Needelmann spoke to other truckers in your presence? A. No, sir.

Q. Do you recall any occasion when you were unloading where Needelmann spoke not to you but in your presence to different truckers? A. No.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. How long have you worked with Pitzer? A. Since 1936 up until about three weeks ago.

Q. When did you go to work for Pitzer? What month? A. Around May, I guess, in 1936.

Q. How old were you then? A. 20 years old.

Q. Had you worked driving a truck before 1936? A. 1526
Never for Mr. Pitzer, no, but I had——

Q. I don't mean for Mr. Pitzer; for anybody. A. I had hauled a few eggs from the State of Indiana to Grampian for Mr. Kayser.

Q. In 1936 did you have a chauffeur's license to drive a truck? A. Yes, sir.

Q. In what state did you get your license? A. The State of Pennsylvania.

Q. Whereabouts did you apply for your license in Pennsylvania? A. At Harrisburg, as far as I can say.

Q. Where did you make your application? A. Grampian.

Q. Did you have a license before 1936 to operate trucks? A. Yes. 1527

Q. When did you first get your license? A. 1934. Around the year of 1934, but I could have got them in 1932 if I wanted to, but I got them in 1934.

Q. How old were you then?

The Court: In 1934.

A. I was 18 years old when I got my license.

Q. In 1934? A. Yes.

Q. Well now, when you drove to New York did you always have a helper? A. Yes.

Q. On each occasion that you came here up to June 1, 1938, did you always have a helper? A. Up to we started to have the men regular, yes.

Q. Did you ever come into New York driving a truck from Pennsylvania without a helper on the truck? A. No.

Q. Now, what kind of merchandise did you truck? A. Mostly canned goods.

Q. What time did you ordinarily start out from Pennsylvania on your trips to New York? What time of day or night I mean? A. Six o'clock in the evening.

1529

Q. What time ordinarily would your truck reach New York? A. Well, if we came straight through around four or five o'clock in the morning.

Q. And did you usually come straight through? A. Yes, we usually went right straight through to the warehouse.

Q. Now, would you drive continuously during those hours? A. No. Mostly this boy I traveled with, he drove from Biglerville to Hamburg, and from Hamburg to Easton I drove; then he would drive from there to Union, and I would drive from there into the City.

Q. Well now, what was the name of your helper that helped you drive your truck? A. James Smallwood.

Q. Is he still working for Pitzer? A. No, he is not

1530 working for Mr. Pitzer for going on close to a year.

Q. What time, when you left home at the hour you fixed, would you arrive at the Holland Tunnel? What time? A. Well, four o'clock in the morning.

Q. And when you got into New York at four o'clock in the morning, where did you next go? A. We went to the warehouses, the first stop.

Q. What time did the warehouses open? A. Mostly seven and eight o'clock in the morning.

Q. From four to seven or eight where did you spend your time? A. Mostly in the truck sleeping.

Q. Sleeping on the seat of the truck? A. Once in a while if it was the summer time we would get up in the trailer and sleep on the cases.

Q. Did you always come in through the Holland Tunnel? A. No. I have crossed on the ferry.

Q. Did you meet Mr. Needelmann at four o'clock in the morning at the Holland Tunnel? A. No.

Q. Do you remember when in the day or night; the hour it was that you first met him? A. Usually around seven or eight o'clock in the morning.

Q. Where did you meet him on the first occasion, if you know? A. I can't recall. I don't know. 1532

Q. Do you know at what hour you met him? A. I would say close to nine or ten o'clock in the morning. Between eight and ten in the morning.

Q. Was it at a warehouse that you met him, such as Austin, Nichols? A. Yes.

Q. Or Leggett's? A. Yes.

Q. What tonnage truck did you operate? A. Ffom nine from eight to ten tons.

Q. Ordinarily what tonnage load did you carry on your truck? A. Eight tons.

(Short recess.)

(The clerk called the roll of the defendants and all defendants were present.) 1533

Q. Now, Mr. Nolder, are you certain that you were driving to New York in 1937? A. Yes sir.

Q. Are you as certain that you saw Mr. Needelmann in 1937? A. Yes, sir.

Q. When you were driving for Pitzer in 1937 did you make trips to any place else besides New York City?

Mr. Ennis: Objection, your Honor, as immaterial.
(Question read.)
The Court: Overruled.

A. Yes.

The Court: He has already testified he did. It is certainly proper cross-examination I think.
The Witness: Yes.

Q. Where? A. Albany, into Connecticut, West Virginia. I traveled through the States of West Virginia, Virginia, Connecticut, Massachusetts and New York State.
1535 Q. That was all in 1937, was it? A. That is right.
Q. Now, from January 1, 1937 until December 31, 1937, are you able to tell us how many trips you made to New York and Pennsylvania? A. No.
Q. Have you got any idea? A. No, I haven't.
Q. Did you make trips every month or did months intervene when you made no trip? A. I guess there has been as high as a month that I didn't make any trips to New York.
Q. Let us take the month of January, 1937: How many trips did you make to New York in 1937, in the month of January? A. Four.
Q. Pardon? A. Four, anyway.
Q. How close together were the trips that you made?
1536 A. Well, I would say one a week.
Q. In the meantime after your trips to New York and in the intervening space of time were you making trips to Virginia? A. Yes. We made trips to other states or other places besides.
Q. Besides New York? A. Yes.
Q. Have you any idea how many trips you made in February, 1937? A. Well, I usually got one trip in here a week.

Q. One a week? A. Yes.

Q. Now, when you left Pennsylvania to come to New York on your trips how long ordinarily would it take to return to Pennsylvania? That is, taking the time between when you left and when you returned to your place in Pennsylvania? A. From 24 to 28 hours.

Q. Never less than 24? A. Yes.

Q. Sometimes, or ordinarily did you work more than 28 hours on any one trip?

The Court: You are speaking now, I assume, of trips between Pennsylvania and New York City?

Mr. Murray: Yes, your Honor.

1538

A. Yes and no to that question. It just depends on our stops here, what time we make in getting back.

Q. Did a space of 30 hours intervene between your stops and your return to Pennsylvania? A. There was times when it has taken us 30 hours, yes.

Q. Was there any time that it took 48 hours? A. No, not unless we were laying over. I mean if we had trouble with the truck.

Q. Well, in these 30 hours how much sleep would you get? A. Well, six or seven hours' sleep. Six hours' sleep anyway.

Q. And was part of that sleep on the seat of your truck? A. Yes.

1539

Mr. Ennis: If your Honor please, may I have this time fixed with respect to whether it was the time that the 807 men were helping or before that?

The Court: No. You may redirect examine the witness.

Mr. Murray: I think I fixed the year 1937.

Q. Now, when a helper rode with you, you say you alternated in driving the truck? A. That is right.

Q. Was the helper younger or older than you? A. Well, mostly it was a guy who came to work after you. You worked——

The Court: No. He wants to know who was older. You or the helper?

Mr. Ennis: Objection as immaterial.

The Witness: I was older.

The Court: Overruled.

Q. Well, did you ever have a helper 16 years old? A. No.

Q. Or 17? A. No.

Q. Or 18? A. No.

1541 Q. Well, how old were you when you started to drive regularly? A. 20 years old I started out.

Q. Did your helper always have a chauffeur's license? A. Yes, sir.

Q. Always? A. Yes.

Q. Now, did you personally ever pay Mr. Needelmann or anyone else for helping to unload your truck? A. That was mostly arranged——

The Court: No. The question was whether you ever paid yourself Needelmann or anybody else?

The Witness: No.

Q. Now when Needelmann or anyone else besides your-

1542 self or your helper unloaded your truck did Needelman ask you to unload it or did you do it voluntarily? A. He asked to put a City man on the truck.

Q. Yes, but I mean when the actual unloading took place, you have told the District Attorney that you assisted in the unloading, is that right? A. Yes.

Q. Well, did you do that voluntarily or did you do it because Needelmann asked you to do it? A. Mostly voluntarily. All voluntary.

Q. All voluntary? A. Yes. That was——
Q. Now——

Mr. Cahill: May we have the rest of the answer, your Honor?

The Witness: That was mostly so we could hurry and get out of the City.

Q. Not because Needelmann asked you? A. No.
Q. You were anxious to get back home? A. Yes.
Q. And you were anxious to get back home so you could start another trip some place else?

Mr. Ennis: Objection. 1544
The Court: Sustained.

Q. Why did you voluntarily assist in unloading your truck?

The Court: He has already said that he wanted to hurry up to get back.

Q. Well, did you have any particular reason for wanting to get back in a hurry?

Mr. Ennis: Objection.
The Court: Oh, I will let him state.

A. I would rather sooner be back than be here.
Q. You like Pennsylvania better than New York City, 1545
is that it? A. Yes.

The Court: Well, he lives there. Isn't that an answer?

Mr. Murray: I don't know whether it is or not, Judge.

Q. Now, did Needelmann or anyone else ever strike you? A. No.

Q. Or offer you any violence? A. No.

Mr. Murray: That is all.

The Court: Does anyone else desire to cross-examine?

(No response.)

The Court: Redirect examination.

Redirect examination by Mr. Ennis.

Q. Mr. Nolder, at the beginning of the period when the 807 men helped you unload your truck did you always assist in the unloading?

1547

Mr. Maguire: I object to it, if the Court please.

The Court: I will allow that.

Mr. Maguire: Exception.

A. Yes.

Q. Did you do as much work or did you do as much unloading at that time as before you had any assistance from 807 men? A. Yes.

Mr. Maguire: Objected to.

The Court: Well, I don't see the materiality of that. I will sustain that objection and strike out the answer.

Mr. Ennis: If the Court please, on cross-examination it was testified that the witness assisted

1548

voluntarily.

The Court: That is right.

Mr. Ennis: I merely wanted to compare——

The Court: Well, if he assisted voluntarily, whatever the proportion of the work he did, he did voluntarily. So that is that. If he did it voluntarily the other man didn't have to do it and if he did 90 per cent of the work he did it voluntarily. Proceed.

Q. Did you ever have any discussion with Needelmann concerning the amount of work to be done by either one of you unloading? A. No.

Q. No discussion at all? A. No.

The Court: He said no.

Mr. Ennis: That is all, your Honor.

(Witness excused.)

The Court: Next witness.

H. EARL PITZER, of Biglerville, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows: 1550

Direct examination by Mr. Ennis.

Q. Mr. Pitzer, what is your business? A. Trucking business.

Q. How long have you been in that business? A. Since 1933.

Q. Where is your business located? A. Biglerville, Pennsylvania.

Q. In 1937 how many trucks did you operate in that business? A. Seven.

Q. Between what points did you operate? A. Between Adams, Franklin and York Counties, Pennsylvania, into New York City, the State of New York, Connecticut, Massachusetts, Virginia, West Virginia, Maryland, District of Columbia, Jersey and Delaware. 1551

Q. What commodities did you truck into New York City? A. Fresh fruit and canned goods.

The Court: Was there a canning factory at Biglerville?

The Witness: Yes, sir.

Q. Were the fresh fruits grown around Biglerville? A. Yes, sir.

Q. In 1937, to place the time more exactly, let us take the early part in the spring of 1937, were your men making deliveries in New York City themselves?

Mr. Murray: I object, if your Honor please.

The Court: Sustained.

Q. Mr. Pitzer, in 1937 did you come to New York City to discuss the matter of the deliveries of your merchandise? A. Yes, sir.

Q. With whom did you discuss it? A. George Needel-
1553 mann.

Q. Can you place the time of that discussion? A. The latter part of October or forepart of November.

Q. Of 1937? A. 1937.

Q. Will you stand and look around this court room and tell the Court and jury if you can see Mr. Needelmann? A. Yes.

Q. Will you step down and point him out? A. The fourth man in the front (indicating).

Mr. Ennis: Will the clerk call the name?

The Clerk: George Needelmann.

(A man stood up.)

The Court: Is that the man?

1554 The Witness: Yes, sir.

Q. On that trip where did you meet George Needelmann? A. On Varick Street.

Q. On the street? A. At a little lunchroom there.

Q. Can you place the lunchroom on Varick Street more definitely? A. It is right near a parking lot.

Q. Was it near the Holland Tunnel? A. It is not very far from the Holland Tunnel.

Q. How many blocks would you say, or do you know? A. I don't know.

Q. What was the first thing Needelmann said to you? A. Needelmann asked me if I received his letter in regard to coming to New York to arrange—sign a contract with Local 807.

Q. Had you ever seen Needelmann before? A. No.

Q. How did you recognize him? A. Needelmann asked me if I received his letter.

Mr. Ennis: I request this paper to be marked for identification.

The Court: Mark it.

(Marked Government's Exhibit 8 for identification.) 1556

Q. I show you Government's Exhibit 8 for identification. Do you recognize that document? A. Yes, sir.

Q. Do you recall when you received it? A. In October. October; about the 27th or 28th of October.

Q. What year? A. 1937.

Q. You received it through the mail? A. Yes, sir.

Q. Examine that document and tell me if that discusses this meeting you had late in October or the early part of November.

Mr. Murray: I object.

The Court: Excluded. 1557

After you received this letter did you come to New York?

The Witness: Yes, sir.

The Court: And did you see Needelmann?

The Witness: Yes, sir.

The Court: Did you have the letter with you?

The Witness: Yes, sir.

The Court: All right. Proceed with your question.

Q. Did you show this letter to Needelmann? A. I don't remember.

Q. But you do remember that he asked you if you had received his letter?

The Court: No. I will exclude that. You can ask him what conversation he had with Needelmann. There is no need to recount what has already been said.

Mr. Ennis: If your Honor please, I offer this in evidence.

Mr. Murray: I object.

The Court: Show it to the other side. Show it
1559 to counsel.

(Mr. Ennis hands paper to Mr. Murray.)

The Court: Go right ahead.

Q. What was the further conversation with Needelmann? A. Needelmann asked me if I received his letter and whether I was going to sign a contract with the local.

Q. What did you reply? A. I told him I didn't want to sign no contract.

Q. What did he say? A. He said I would have to sign a contract in order to operate into New York City.

Q. And what did you reply? A. I told him that I wasn't—I didn't want to sign a contract and thought there might be some other way that I didn't have to sign a contract.

1560 Q. What did he say to that? A. He said it didn't matter a damn what I wanted to do, I would have to sign a contract if I wanted to operate into New York.

Q. This conversation occurred in that lunchroom? A. That is right.

Q. Did you receive any other letters from Needelmann?

Mr. Maguire: I object to that, if the Court please. There is no evidence that he received any from him.

The Court: Sustained.

Mr. Ennis: I offer this letter in evidence.

Mr. Maguire: Objected to.

The Court: I will sustain the objection until there is some proof here that Needelmann wrote it.

Mr. Ennis: If the Court please, he testified that Needelmann asked him if he had received a letter.

The Court: Yes, that is right.

Mr. Ennis: Which is dated just before this meeting.

The Court: I heard that.

Mr. Ennis: I will leave that then, your Honor.

1562

Q. Was there anything further said in this conversation in the lunchroom? A. It was quite a bit of conversation at that time. I just don't recall all of it.

Q. Was anyone with Needelmann when you met him? A. Yes.

Q. Do you know whom that person was? A. I know one of the people that was with Needelmann.

Q. Were there several people with him? A. There were other people there, but Tony Venditti——

Q. Was with Needelmann? A. That is right.

Q. Did he enter into this conversation? A. Yes.

Q. Will you stand and look about the court room and tell the Court and jury if you see Tony Venditti? A. The man with the blue sweater on (indicating).

Q. Will you point him out?

1563

The Clerk: Tony Venditti.

(A man stood up.)

Q. Is that the man? A. Yes.

Q. What did Venditti say? A. Venditti said that I would have to sign a contract. He agreed with the conversation of George Needelmann.

Q. They both discussed that matter with you? A. That is right.

Q. Now, what did you do after that conversation in the lunchroom? A. After the conversation there we went up to union headquarters.

Q. Who are "we"? A. Needelmann, Venditti, Tom Bennett and myself.

Q. Who is Tom Bennett? A. He is a man who did some rate work for me. He came to New York with me at that time.

Q. Do you recall where union headquarters was? A. It was in a bank building—Corn Exchange Bank, I believe; I am not sure.

1565

Q. Do you recall what street it was? At what street? A. I don't. I am not so well acquainted with the streets.

Q. Was it near the restaurant? A. Not so far from there, no.

The Court: Was it near the Holland Tunnel?

The Witness: Near the exit to the Holland Tunnel, yes.

Q. Did Needelmann tell you what headquarters it was? A. Yes.

Q. What did he say? A. He said it was the headquarters of Local 807.

Q. Do you recall whether those headquarters were on the first floor or upstairs in the building? A. They were upstairs.

1566

Q. Will you state how you entered the building? A. We walked up some steps to a closed door, which he rapped on the door, and it was opened by a buzzer.

Q. A buzzer opened the door and there was no person at the door? A. No.

Q. Is that correct? A. Yes, sir.

Q. Then what did you do? A. We went into a hallway, like to another door where he rapped and asked for someone, where they looked through at us, and then let us through another door into another room.

Q. What do you mean by looked through at you? A. They looked through sort of a peephole in the door at us.

Q. When you approached that door was the peephole open or closed? A. I would say it was closed.

Q. When was it opened? A. After he rapped on the door.

Q. After you were allowed through that door where did you go? A. Into another room.

Q. And then what happened? A. Then they called in 1568
a man.

Q. Who called in? A. Needelmann called in a man who was supposed to be a delegate.

Q. Well, did Needelmann say he was a delegate? A. Yes.

Q. Did Needelmann introduce this man to you? A. He did.

Q. Did he state his name? A. He did.

Q. What name did he say? A. I don't remember. I don't recall the name.

Q. Will you describe that room? A. Well, it was

The Court: What is the materiality of that?

Mr. Ennis: If the Court please, I am trying to show the circumstances under which negotiations 1569
between this witness and this so-called delegate and Mr. Needelmann were carried on, and if you would bear with me for a question or two I would like to bring it out.

The Court: All right.

Q. Can you describe the room? Was it an office with furnishings? A. No. It was just a room with a large table in it.

Q. Were there any chairs? A. There might have been one or two chairs.

Q. Did you speak to the delegate? A. Yes.

Q. Did you conduct this conversation standing or sitting? A. Standing.

Q. Did anyone ask you to sit down?

Mr. Murray: I object to it as immaterial.

Mr. Maguire: I object to it as immaterial.

The Court: I will sustain the objection.

Q. But you did conduct this conversation standing? A. Yes.

1571 Q. How long was the conversation? A. We were probably there a half hour.

Q. And the five of you were standing during that period?

Mr. Murray: I object, if the Court please, on the ground that it is immaterial.

The Court: I will allow it. He didn't sit down.

Q. Did the five of you stand during that period? A. Yes, sir.

Q. What did Needelmann say? A. Needelmann introduced me to the delegates and said that he had me there, too—that he had tied up—that Needelmann had tied up my job and had me there to sign a contract.

1572 Q. To whom did he say that? A. To the delegate.

Q. What did the delegate say? A. The delegate told me I would have to sign a contract to operate in New York.

Q. What did Needelmann say? A. (No answer.)

Q. What did you reply? A. I told Needelmann and the delegate that I did not want to sign a contract; I did not think it was necessary to sign a contract.

Q. Before this meeting in union headquarters had you paid any money to Needelmann? A. Question again, please?

Q. Before the meeting in headquarters had you paid any money to Needelmann? A. Yes.

The Court: Personally?

Q. And did you hand the money to him personally? A. No.

Q. How did you pay it to him? A. By check sent to New York with my driver, and maybe—I won't say for sure whether the drivers paid him in cash or not. 1574

Mr. Murray: I move to strike out the answer, if your Honor please, as not within the knowledge of the witness.

The Court: Strike it out.

Q. Did you have several conversations with Needelmann? A. Yes.

Q. Do you know his voice? A. Yes.

Q. Did you have any conversation with him, any telephone conversation with him, before your first meeting with him? A. Yes.

By the Court.

Q. Can you say now that the person with whom you talked over the telephone was recognized by you as Needelmann? A. No. He told me it was Needelmann when I spoke to him on the telephone. 1575

Q. Did you recognize his voice? A. I could not recognize his voice as Needelmann no more than what he told me that he was Needelmann. Then again when I had other calls from him it was the same voice.

By Mr. Ennis.

Q. But you do know his voice? A. Yes.

Q. Was the voice you recognized as Needelmann's the voice you heard over the telephone on this occasion before the meeting? A. Yes.

Mr. Murray: I move to strike that out, if your Honor please.

The Court: No, I will allow that to stand.

Mr. Murray: Exception.

Q. What did Needelmann say to you on that occasion?

1577

Mr. Murray: I object, if your Honor please, on the ground that no proper foundation has been laid.

The Court: It has not been shown yet when the conversation took place or where the witness was or where Needelmann was, or how it took place.

Mr. Ennis: I will try to supply that, your Honor.

Q. How long before this first meeting with Needelmann around the end of October in 1937 did you have your first telephone conversation with him? A. I would say in September; the fore part of October.

Q. Where were you? A. At home.

Q. In Biglerville? A. In Biglerville, yes, sir.

1578 Q. Did Needelmann say over the phone where he was?

Mr. Murray: I object on the ground that it is an assumption.

The Court: Sustained.

Q. What did Needelmann say to you?

Mr. Murray: I object, if your Honor please.

The Court: Well, you will have to show that from conversations that he subsequently had he

knows now whether the voice that he heard over the telephone was that of a person that he knew and recognizes by the voice.

Mr. Ennis: I was trying to do that, and I am afraid I did it imperfectly, your Honor.

The Court: All right.

Q. Did the voice which you now know as Needelmann's—was that the voice you heard on this occasion in the fore part of October or September? A. Yes.

Q. What was said to you over the telephone by the person with this voice? A. The phone call made to me would come through collect by one of my drivers, my driver telling me—— 1580

The Court: No, not what your driver told you.

Q. Just say what this voice told you. A. I am coming to that——

The Court: The question is what Needelmann told you.

A. (Continued) Needelmann would then come on the wire and told me that he had my truck tied up here and they wanted pay for unloading them or they would tie them up, or I would have to come to New York and sign a contract with them. They would hold the truck and the drivers here until I come up and signed a contract. 1581

Q. What did you say to him? A. I told him that it would not suit me to come to New York; that I just could not leave my business at any time and come up here.

Q. Did you say anything else? A. Then on those occasions I would have to call through to Houck Bros., who are brokers for the company I haul for, and have them pay for the unloading here in order to get the trucks unloaded and out of New York.

Mr. Murray: I move to strike out the answer, if your Honor please.

The Court: Strike out that part of the statement of the witness that he had to call Houck, and all that follows that.

Q. What did you do after that conversation with Needelmann? A. (No answer.)

Q. Did you testify that Needelmann told you that your trucks were tied up and you would have to——

The Court: No. Mr. Ennis, do not repeat the question. He has told us what he said Needelmann
1583 said to him. There we stopped.

Q. What did you do after Needelmann said that? A. I arranged to pay Needelmann——

Q. No, what did you do? What did you say or what physical acts did you do?

The Court: No. What did you do; not what did you say, unless you said it to Needelmann.

Q. What did you say to Needelmann? A. I told him I would arrange for the money here to unload the trucks that day.

Q. Did you do that? A. Yes.

Q. Now, it was following such a conversation with
1581 Needelmann that you came to New York? A. Yes.

The Court: Not this conversation, not the first telephone conversation?

The Witness: No, I did not come to New York until after I received a letter.

Q. But it was after that conversation and after you received this letter that you came to New York? A. Yes, sir.

Q. Now, going back to this meeting at union headquarters——

Mr. Maguire: Now, I object to the characterization "union headquarters". It has not been established. It was so described, he said, by Needelmann, but it has not been proven yet.

The Court: Well, he testified without objection that after he met Needelmann in the restaurant and had some talk with him, that they went over to union headquarters.

Mr. Maguire: To a place described by Needelmann as such.

The Court: Yes, all right. Strike out "union headquarters," and say the place where you went with Needelmann and Tony. 1586

Q. At this meeting was there anything further said in addition to what you have already stated about your signing a contract? A. I told Needelmann and Tony and the delegate in the presence of Bennett who was with me that there was other union men had bothered my trucks, and the one man in particular who had stopped my trucks and unloaded them at different times—if I had to have a local man make those deliveries, I would prefer to have that man make them rather than Needelmann.

Q. What was the reply to that statement and who made it? A. That delegate told me that the man who worked those trucks should have tied them up and had a signed job; that after Needelmann stopped the trucks and tied them up, that made it his job and he was the man who would have to work those trucks. 1587

Q. Did you state the name of that other 807 man who had unloaded your trucks? A. I did not get the question, please.

Q. Did you state to the delegate the name of that other 807 man who had unloaded your trucks? A. Yes.

1588

Q. And what did you say to the delegate about the unloading of your trucks by this other 807 man?

The Court: No, he has already said that.

By the Court.

Q. What name did you give? A. You mean the name of the other union man?

Q. Yes. A. Andrew Downey.

By Mr. Ennis.

1589 Q. Andrew Downey? A. Yes.

By the Court.

Q. That is what you stated to these three men; is that right? A. That is right.

By Mr. Ennis.

Q. What else did you say to those three men about Andrew Downey? A. I told them that I had met Andrew Downey one time here in New York, and if I had to employ a local man to make those deliveries I thought that he would be the better man for me to have, because he seemed more like a man to me who would work than the
1590 other fellows did.

Q. What reply was given to you? What was said then? A. Needelmann said that it was his job, because Downey should have tied up the job and had a signed contract; and he did not do that; therefore it was his job.

Q. What did the delegate say to that remark of Needelmann's? A. The delegate told us that that was right;

that it would be Needelmann's job and he would be the man who would work it, because he was the man who tied it up.

Q. Did you say anything further to the delegate about having 807 men work your jobs without signing a contract? A. Yes.

Q. What did you say? A. I asked the delegate if we could not haul into New York and have 807 men make the deliveries without a contract, and he said not; that it would have to be a signed job.

Q. Did you say anything to them about using 807 men in addition to Needelmann? A. Yes.

Q. What did you say? A. I asked them about any other 1592
807 men, if Downey could not work the job, another 807 man doing the job; and he told me not, because it was Needelmann's job; that he had tied the job up and he was the one who would have to work, he or his men. He was the one who would be boss of it.

Q. Well, did he explain or say anything about what was meant by "Needelmann's men"? A. The meaning of "Needelmann's men" was——

Q. Did he say what it was? A. —if there was more than one truck here and it took two men to work it, if Needelmann could not do the job himself he was to say who the other man would be; Needelmann would.

Q. Did you ask if you could say who the other man was to be? A. I did.

Q. What did they tell you? A. He told me that I 1593
could not pick the men to do the work; that it was Needelmann's job and he would work the job himself or pick the man who would work the job.

Q. Do you recall anything else that was said during that conversation? A. At that time I told these four men in headquarters there that if I had to sign a contract and pay for each load of stuff to go into New York, I would have to discontinue New York hauling.

Q. Did anyone reply? A. The reply was——

Q. Well, who made it, do you remember? Can you recall whether Needelmann or the delegates or this other chap made it? A. I can't.

Q. What was said? A. That that was the rule; that I would have to abide by it.

Q. If you wanted to continue hauling? A. If I wanted to continue hauling in New York.

Q. Did any one of those people ask you to sign a contract then? A. Yes.

Q. What did you say? A. I refused to sign a contract. I said I wanted to think it over.

1595 Q. And you left? A. That is right.

Q. When did you next see Needelmann? A. Needelmann came out to Biglerville in one of my trucks.

Q. Can you tell us the time? A. That was somewhere around the middle of November.

Q. In what year? A. 1937.

Q. What time of the day did you first see him on that occasion? A. I would say he got there about 5 o'clock in the evening.

Q. Where did you see him? A. At my office.

Q. What was the conversation? A. Well, he came in and said hello and started a general line of conversation and asked me—told me he had come out to talk to me about signing the contract.

Q. Was anyone with him? A. Tony was with him.

1596 Q. Tony who? A. Venditti.

Q. What did Tony say? A. Tony just verified the statement made by Needelmann.

Q. What did you reply? A. I told them that I did not want to sign a contract and I wanted to think it over and see if we could not make some other arrangements about it.

Q. What did they say? A. They said I would have to sign a contract because the delegates were getting on him about working this job and not having a signed contract.

Q. Who said that? A. Needelmann.

Q. Then what did you say? A. I told him that I did not know any reason why I could not haul merchandise into New York City and make deliveries without being bothered by their local 807, and there was no law in New York City that I knew of, or New York State, or Federal Government law, not allowing my trucks to come into the City and make their deliveries.

Q. What did Needelmann say to that? A. Needelmann very readily told me that it did not matter a God damn about the laws; that that was the rule they had and that was the rule I had to go by.

Q. This conversation occurred in your office? A. That is 1598
right.

Q. And was anything else said at that time in your office? A. I would not say there was. Later on we had a conversation in my home.

Q. On the same day? A. In the evening; that evening.

Q. What time was that? A. Oh, probably around 9 o'clock in the evening.

Q. Who were present at that conversation? A. Needelmann and Tony and myself; my wife and two children were there.

Q. Your children? A. Yes.

Q. Will you state as best you now recall what was said at that conversation? A. Well, we had a general line of conversation with regard to the contract.

Q. Yes? A. And Needelmann told me that I would 1599
have to sign a contract because the delegates were riding him about doing the job and not having it signed, and the only way out for me to continue operating in New York was to have a signed contract.

Q. What did you say? A. Well, I told him and Tony that I did not want to sign a contract, and I was going to think it over until morning and we would talk it over then again.

Q. Did he say anything further at that conversation? A. Give me that question again.

Mr. Ennis: I will withdraw it.

Q. How long was that conversation? A. At my home?

Q. Yes. A. Probably a half hour; three-quarters.

Q. Well, do you remember anything else that you or anyone present said in addition to these remarks you have now made? Was there any discussion——

The Court: One moment now. Just one question at a time.

1601

Mr. Ennis: I am sorry, your Honor.

The Witness: Can you give me that again?

The Court: Yes. The reporter will repeat it.

Q. (Read) A. I told Tony and Needelmann at that time that I did not want to sign a contract if there was any other way of handling it without a contract; and we left the thing ride until morning when we went into further discussion about it.

Q. Well, before they left that evening did Needelmann say anything about you sending your trucks into New York at that time without having local 807 men unload it?

Mr. Maguire: Objected to as leading and sug-

1602

gestive.

The Court: Yes. The trouble is you are suggesting to the witness what you want him to testify to.

Mr. Ennis: Well, I will withdraw that question, your Honor.

The Court: Ask him if there was anything further said that night in addition to what he has already told us.

The Witness: Oh, there was a general line of conversation with regard to the signing of a contract between Needelmann and Tony and myself.

By the Court.

Q. Was that all you talked about, the signing of the contract? A. Yes.

Q. You did not talk about anything else? A. Well, that was the principal conversation. I don't recall anything else that we talked on.

By Mr. Ennis. 1604

Q. Mr. Pitzer, at that time before any contract was signed were you sending some trucks into New York City and having them unloaded without paying 807 men? A. Yes.

Q. Did Needelmann say anything about that? A. Yes. He accused me of gypsying in.

Q. Well, don't say what he accused you of doing. What did he say? A. He said I gypsied loads in here without picking up their union men to make deliveries.

Q. Is that all he said? A. And at times when we brought a load in here and my driver made the delivery and Needelmann found out that the driver made the delivery, I had to pay Needelmann for that day's work for unloading that truck which he did not unload. 1605

Q. He said that? A. He said it, and I did it on different occasions.

Q. Did he say anything more about you doing that? A. He said that if—Needelmann said that if I gypsied loads into New York they would tie up the job and would not alow me to come into New York City at all.

Q. You stated to Needelmann that you would think it over over night? A. Yes.

The Court: That is, the signing of the contract?
Mr. Ennis: Yes, the signing of the contract.
The Witness: That is right.

Q. What was your investment in your business at that time?

Mr. Maguire: Objected to.
The Court: I will allow that.
Mr. Maguire: Exception.

A. $40,000.

Q. How many trucks did you have? A. Seven.

Q. Did you discuss the matter that night with your wife?
1607 A. I did.

Q. What did you say to Needelmann the next morning? A. I told Needelmann the next morning that quite a bit of our business was New York hauling, and I did not want to stop hauling New York, and I did not want to have to sign a contract to come in here; I felt as if my men could come in here and make the deliveries; but he told me that I positively could not do that, and I would have to sign a contract with Local 807 so that he could work the job, because if I did not they would have to tie up the job until I would come to New York and would sign a contract.

Q. Did you sign a contract at that time? A. I did.

Q. Did you say anything more about the signing of the contract at the time you signed it? A. Well, when I signed
1608 the contract I told him I was signing the damned thing against my will and judgment.

Q. Did you say anything else? A. But it was the only way out; I had to sign it in order to operate in New York.

Q. Did he answer that statement? A. Needelmann told me I would have to sign a contract or keep the trucks out of New York, or they would tie them up here and hold the drivers—hold the trucks and drivers until I came to New York and signed one.

Mr. Ennis: I request that this document be marked for identification.

The Court: All right.

(Marked Government's Exhibit 9 for Identification.)

Q. I show you Government's Exhibit 9 for identification: Do you recognize your signature on that paper? A. Yes.

Q. Will you state to the Court and jury when you first saw that paper? A. In November of 1937 when Needelmann brought it to my house.

Q. Is that the contract you signed? A. Yes. sir.

Q. At the time you signed it was it signed by anyone 1610
else? A. No.

Q. There was no other signature but yours? A. No, sir.

Q. Did you keep this so-called contract? A. No, sir.

Q. What did you do with this after you signed it? A. Needelmann brought it back to New York with him.

Q. Did he leave a copy with you? A. No, sir.

Q. Did you ever receive a copy of this document? A. No, sir.

Q. When did you next see this document after the day you signed it? A. Yesterday.

Q. I showed it to you yesterday? A. Yes, sir.

Mr. Ennis: I offer this in evidence, your Honor. (Handing to defendants' counsel.)

Mr. Maguire: May we have the opportunity dur- 1611
ing lunch hour of checking on this?

The Court: Recess until 2 o'clock. Everyone in this room will remain seated until the jurors have left.

(Recess to 2 P. M.

AFTERNOON SESSION.

(The clerk called the roll of defendants.)

H. EARL PITZER, resumed the stand.

The Court: Proceed.

Mr. Ennis: I offer Government's Exhibit 9 for identification in evidence.

The Court: Received.

(Government's Exhibit 9 for Identification received in evidence.)

1613 The Court: If you do not wish to read it to the jurors you might tell them what it is and then pass it around.

Mr. Ennis: This is a contract signed by the witness and by William Campbell for Local No. 807.

The Court: What is the date?

Mr. Ennis: Dated November 19, 1937.

The Court: Does it cover any particular period of time?

Mr. Ennis: If the Court pelase, it covers a period of time from that date up to the first day of September, 1938.

Direct examination (continued) by Mr. Ennis.

1614 Q. Mr. Pitzer, following the signing of this paper, on subsequent deliveries in New York City, were there any occasions in which they were not made by 807 men? A. Yes.

Q. Will you fix the time of an occasion in which the deliveries were not made by 807 men? A. We had our trucks coming in here. We have had deliveries in Long Island where the driver has gone right through and made the deliveries.

Q. Was there any occasion after this contract was signed in November, 1937, in which the delivery was made neither by Needelmann or Tony Venditti? A. Yes.

Q. Nor by your men?

Mr. Maguire: Will you limit it to June 1, 1938?

Mr. Ennis: Yes.

Q. Was there some time between the making of the contract in November, 1937, and the following June in 1938 in which a delivery was made neither by Needelmann nor Venditti nor by your own men? A. Yes.

Q. Can you fix the time of such an occasion? A. At different times when there were trucks in here there were 1616
other 807 men put on these trucks to unload them other than Needelmann——

Mr. Maguire: I move that "other 807 men" be stricken out.

The Court: Yes, strike it out. The question was whether there were men who unloaded your trucks between the signing of the contract and the 1st of June following other than Needelmann, Tony Venditti or your own drivers.

The Witness: Yes.

Q. Were any of those men who were not supplied by Needelmann? A. No.

Q. Do you recall any occasion during that period in 1617
which you requested your broker to arrange for a different method of delivery? A. Yes.

Q. Did you come to New York City to talk to your broker about it? A. Yes.

Q. Whom did you speak to? A. Mr. Raymond.

Q. Who is he? A. He is traffic manager of Houck Bros.

Q. What did you say to Mr. Raymond?

Mr. Maguire: I object to it.
The Court: Sustained.

Q. Did you have conversations with Mr. Raymond about your deliveries in New York City?

Mr. Maguire: Objected to.
The Court: Sustained unless you strike out beginning with the word "about."

Q. Did you have conversations with Mr. Raymond? A. Yes.

Q. Did you go with Mr. Raymond to this room that
1619 Needelmann had called union headquarters? A. No.

Q. Did you never again go to that room? A. Yes.

Q. In whose company? A. Tom Bennett and Fred Lange.

Q. Who is Fred Lange? A. He is a trucker here in New York City.

Q. Whom did you see at the so-called union headquarters? A. Lange made me acquainted with a delegate or someone there. I don't know the name.

Q. When was the time of this occurrence? Was it between the formation of the contract and June, 1938? A. Yes.

Q. What did you say to this delegate?

1620 Mr. Maguire: Objected to.
Mr. Murray: I object.
The Court: Sustained.

Q. Was this delegate the same person to whom you had spoken in Needelmann's company?

Mr. Maguire: Objected to.
The Court: Allowed.

Mr. Maguire: Exception.

The Court: You may answer.

A. Yes.

Q. What did you say to him? A. At that time I was going to ship——

The Court: No.

Q. What did you say?

The Court: We are not concerned with what you were going to do. The question is what conversation did you have. 1622

Mr. Maguire: May we have the time fixed?

By the Court.

Q. When was this? Can you be any more specific than to say that it was after the signing of the contract and before the 1st of June following? A. I wouldn't want to set a time. I am not sure.

Q. Do you remember what month it was? A. I am not sure.

Q. Is there anything that you have with you by which you can refresh your recollection? A. I believe that that might have been the beginning of April.

By Mr. Ennis. 1623

Q. Of 1938? A. Of 1938.

Q. What did you say to the delegate? A. I asked him about having Lange make my deliveries in New York.

Q. What did he say? A. "No." Lange could not make the deliveries in New York.

Q. Did he say why? A. Because it was an assigned job to Needelmann. It was his job.

Q. Did Lange say anything at that time? A. Lange wanted to make my deliveries.

Q. What did he say? A. He said he wanted to handle my merchandise here, make my deliveries for me.

Q. Was there anything said about the union affiliations of Lange's drivers? A. Yes.

Q. What was said? A. The delegate told Lange that his men were union and he did not dare have them make my deliveries here.

Q. Did he say what union Lange's men belonged to? A. It was local 807.

Q. Did anybody say that? A. No, but we talked at
1625 headquarters, it was supposed to be——

Q. At this place you had the conversation? A. That is right.

Q. You talked about Lange making the deliveries with his men? A. Yes.

Q. Now, will you search your mind as to whether anybody during that conversation, at which the delegate was present, stated what union Lange's men belonged to? A. Lange told me himself his men belonged to——

Mr. Boudin: I move to strike it out.

The Court: Strike it out unless it was in the presence of the delegate.

Q. Did Lange so state at that conversation in the
1626 presence of the delegate? A. He stated in the presence of the delegate that he would not dare do it——

The Court: No.

Mr. Boudin: I move to strike that out.

The Court: Strike that out.

By the Court.

Q. You have stated that you had a conversation with Lange? A. That is right.

Q. With respect to the union that his men belonged to. Was that a conversation in the presence of only Lange and yourself? A. Yes.

Q. Not in the presence of the delegate? A. Later on we talked in the presence of the delegate.

Q. Well, in the conversation that you subsequently had with the delegate, what if anything was said with respect to the union that Lange's men belonged to? A. Well, the delegate told Lange that he would not dare to make my deliveries here because it was the same union.

By Mr. Ennis.

1628 Q. What did Lange reply? A. Lange told me that he would discontinue making my deliveries so as to not have trouble for himself.

Q. What did you say? A. I told Lange I would have to make some other arrangements in regards to the deliveries here.

Q. What other arrangements did you make?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. Do you recall anything else that was said during that conversation at which the delegate was present? A. The delegate told me——

1629 Mr. Boudin: Objected to. The answer to that should be yes or no.

The Court: Yes. Answer the question yes or no. Strike out anything the witness has said.

The Witness: May I have the question read?

The Court: The stenographer will read it.

Q. (Read) (Continued) What do you recall of what was said? A. The delegate told Lange and myself that

the merchandise would have to be unloaded here by Needelmann, the man who signed the job.

Q. After your conversation with Needelmann in November of 1937 when you signed this paper, when did you next see Needelmann? A. A couple of months later, probably in March or April.

Q. Where did you see him? A. In New York.

Q. Did you have a conversation with him? A. Yes.

Q. What did he say? A. He asked me about some pay for holidays which they claimed that I did not pay the men where they had worked—where I had owed them for holidays.

1631 Q. What did you say A. I told him that according to our records I did not owe them for holidays and I did not feel as if I should pay for a holiday's work where a man did not work.

Q. What did he say to that? A. He said if a man worked in a week where there was a holiday he would have to be paid for the holiday whether he worked or not.

Q. Was anything said about how many days' work during the week entitled the man to holiday payments? A. If he worked one day during the week.

Q. What did Needelmann say about that? A. That I would have to pay him for the holiday if it came in that week, a week that he worked.

Q. Even if he worked only one day? A. That is right.

Q. Well, was there any further discussion along that
1632 line? A. I received a letter from New York in regards to a man that worked——

Mr. Maguire: I object to that.

The Court: Yes. "I received a letter from New York," and strike out everything after that.

Q. Restricting yourself, Mr. Pitzer, to the conversation with Needelmann, what else did he say? A. Needelmann

told me that I would have to pay for the holiday and if I did not pay for the holiday they would tie up the trucks until I did pay it.

Q. Did you pay? A. I did.

Q. Now, during that conversation with Needelmann about paying men for holidays, did you discuss any other subject with him concerning your New York deliveries?

Mr. Boudin: If your Honor please, I would like to object to it at this point. I do not think that conversations with Needelmann are binding upon the union, if they refer to construction of the contract. Now, there is this testimony gone in already about the holidays, and we could not anticipate; we did not know what it would lead to. I assumed it would be connected. 1634

The Court: The objection is overruled.

Mr. Boudin: Exception.

Q. Apart from this matter of payment for holidays, was there any other subject you discussed with Needelmann concerning New York deliveries?

Mr. Boudin: Same objection.

The Court: Same ruling.

Mr. Boudin: Exception.

The Court: You may answer.

1635

A. Yes, I discussed with him about—

Q. What was said? What did you say? A. I discussed with him about making some other arrangements about delivery in here; probably arranging for a terminal here and having some other trucker deliver the merchandise.

The Court: Did this conversation take place before or after this visit you made with Lange?

The Witness: That was after.

Q. What did you say to him about arranging for a different method of delivery? A. Yes.

Q. What did you say? A. I told him I wanted to arrange for a terminal where I could come in here and unload and not have my trucks make the delivery; let the other truckmen make the delivery.

Q. What did he say to that? A. He said that if I did that he would have to handle the merchandise; it was a signed job.

Q. Well, did you say anything to him about you picking the men to handle the merchandise? A. Yes.

Q. What did you say? A. I told him that I would pick
1637 the men who would work for me here in New York.

Q. Did you say anything to him about whether such men picked by you would be union men or not? Yes.

Q. What did you say? A. I told him that I would have union men, 807 men, here in New York handle it.

Q. What did he say? A. He said I could not do that.

Q. Did he say why? A. Because it was his job; he gives the man that tied it up, and it was his job to work and he would work it or would say who would work it.

Q. Can you tell me how many 807 men worked for you in——

Mr. Maguire: Objected to, your Honor.

Mr. Ennis: I am just asking him if he can tell me, your Honor.

1638 Q. (Continued) How many 807 men worked for you between the date of signing that paper and June 1st, 1938? A. I would say anywhere from 15 to 20.

Q. Did you have anything to do with selecting those men? A. No.

Q. Do you know who selected them? A. Needelmann.

Q. And you did discuss with him the matter of your selecting them? A. Yes.

Q. And what did he reply to you?

Mr. Boudin: Object to that; already answered, and also irrelevant, immaterial and incompetent.

The Court: Yes.

Mr. Ennis: I request that the checks that I hold in my hand be marked as Government exhibit for identification, one exhibit.

The Court: That will be Exhibit 10, and the clerk will in addition thereto designate each check consecutively, beginning with A. How many are there?

(Marked Government's Exhibits 10, 10A to 10-U 1640
inclusive for identification.)

Q. Mr. Pitzer, I show you Government's Exhibit 10 for identification. Do you recognize your signature on that check? A. Yes, sir.

Q. Will you examine that check and tell me if you recall paying that check to anyone or giving it to anyone?

The Court: That means you personally.

Q. You personally. Did you hand it to anyone? A. I handed it to my driver to bring to New York.

Q. Do you recall what driver? A. No.

Q. Well, did you have a settled method in your business of paying these 807 men? A. Yes. 1641

Q. Will you state what that method was? A. My pay day is Saturday, and each Saturday these checks were made up and sent to New York with the truck that came up Monday. If there wasn't a truck came up Monday, they would come up Tuesday. The first truck in the beginning of the week coming into New York brought the checks along for the labor here.

Q. Did you receive letters or any other communications from George Needelmann?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Do you know George Needelmann's handwriting? A. I think so.

By the Court.

Q. Did you ever see him write? A. The question again, please?

1643 Q. Did you ever see him write? A. No.

By Mr. Ennis.

Q. Did you ever show him any communication which he stated to you that he had written?

Mr. Maguire: I object to that, if the Court please.
The Court: Sustained as to form.
Mr. Ennis: That is all, your Honor.
The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Mr. Pitzer, have you told the jury about all the meetings you had with Needelmann, Venditti and anyone
1644 else that was with them at the time? A. Will you read that to me again?

Q. (Read.) A. I think so.

Q. Now will you state again when it was, at least the date according to your recollection, that you first came to New York in October of 1937 at the time you say that you met Needelmann in some kind of a diner? A. That was the latter part of October or maybe the very first of November.

Q. Can you fix the date? A. I don't think I could fix a particular date, no.

Q. At that time did you have a broker that represented you in New York? A. No, sir.

Q. Did you have a broker that represented you at any time after that date? A. No, sir.

Q. Did you have a broker named Houck? A. No, sir.

Q. Do you know such a man? A. H. M. Houck Bros.?

Q. Yes. A. Yes.

Q. Who are they? A. Brokers for C. H. Musselman Company, Biglerville.

Q. Well, did you meet Mr. Houck or whatever his name is on that occasion in the latter part of October or first 1646
part of November, 1937, when you say you had this conversation with Needelmann? A. Yes, I talked with Mr. Raymond.

Q. Yes? A. Of that office.

Q. Did you take Needelmann and Venditti to the broker's office on that occasion? A. No, I did not.

Q. Was Needelmann and Houck in the broker's office with you on that first occasion when you say that you talked to them in New York? A. They probably came to the broker's office and met me there.

Q. Well, when you got into New York on that first occasion did you go directly to the broker's office? A. No.

Q. Where did you go? A. Down by this little diner, restaurant where I had some trucks in at that same time.

Q. Well, did you go to the broker's office after you 1647
went to the diner or near the diner? A. Some time after that I was in the broker's office, yes.

Q. Well, how long afterwards? A. I don't know.

Q. Was it the same morning? A. It was.

Q. Within an hour of the time that you say you met Needelmann at the diner? A. I don't know how long a time might have elapsed from that time until we went down.

Q. Did Needelmann meet you in your broker's office or the broker's office? A. The broker's office.

Q. Will you please pronounce that name for me again? A. Just what name do you mean?

Q. The broker. A. The broker's name.

Q. Yes. A. H. M. Houck & Bros.

Q. How do you spell the last name? A. H-o-u-c-k.

Q. H-o-u-c-k? A. & Bros.

Q. Where are Houck & Bros. offices? A. 100 Hudson Street.

Q. Do you know what kind of a building that is? Is it a large office building? A. Large office building, yes.

1649 Q. Did you go to the office in an elevator when you got inside the building? A. On that particular occasion I don't know whether I walked up or went up on the elevator.

Q. At least you know what floor Houck & Bros. is on? A. Offhand I think it is on the second floor.

Q. Well now, was Venditti present when you first met Needelmann on that occasion? A. Yes.

Q. And I am referring to this time you came to New York some time in October or November, 1937? A. Yes, sir.

Q. He was present? A. That is right.

Q. Well, did you subsequently that morning after your arrival in New York meet Needelmann and Venditti in Houck's, the broker's office? A. They were at the broker's

1650 office, met me there, yes.

Q. What time did they meet you there? A. I don't know.

Q. Did you invite them to meet you at the broker's office? A. No.

Q. Did you tell them you were going to the broker's office? A. Yes.

Q. Did you say anything to them about them going there? A. Not that I recall.

Q. But you saw them in the broker's office subsequent to the first conversation you had with them in New York? A. I would say the first time I talked with them I had talked to them in the broker's office.

Q. Well, did you talk to them in the broker's office at any hour that day that you came to New York? A. Question?

The Court: The reporter will repeat the question.

Q. (Read.) A. Yes, some time during the day.

Q. You say now that you did not invite them to the broker's office for a conference? A. No.

Q. Do you know how they knew that you were going to be in the broker's office? 1652

Mr. Cahill: I object to it as repetitious and already testified.

The Court: I will allow it.

Q. Did you answer, Mr. Pitzer? A. Question, please?

Q. (Read.) A. I don't know. I might have told them I was going down to Houck's office.

Q. Did you tell them for what purpose you were going down? A. I don't recall.

Q. Well now, in the broker's office was there a conversation in which Needelmann, Venditti and yourself and Raymond took part? A. Yes, so far as I know there was some conversation there. 1653

Q. Well, will you tell us what the conversation substantially was in Houck & Bros. brokers' office? A. I don't recall.

Q. Do you recollect what Mr. Raymond said? A. I don't recall.

Q. Do you recollect what Mr. Needelmann said? A. I don't recall what the conversation was there.

Q. Do you recollect what Venditti said, if anything? A. No.

Q. Or what you said? A. No. I don't remember what we talked about there.

Q. Well, did you sit down in a room together in this broker's office? A. As I remember it, we talked a little bit in the hall but I don't remember what the conversation was about.

Q. You mean the four of you talked in the hall? A. Yes.

Q. Before you went into the broker's office? A. Well, it is the hall of the broker's office.

Q. Yes. Before you went inside the office? A. I don't recall being inside the office. There is a hall right where the office was where we did the talking.

1655 Q. Did you go in the office at all on that occasion? A. I don't recall going into any particular office.

Q. Well, where did you meet Mr. Raymond? A. Well, at the office, but there is a small hallway there and the office was sort of closed off from the hallway. It is on the same floor with the office.

Q. What connection, if any, did Mr. Raymond have with Houck & Bros.? A. He is a traffic manager there.

Q. Well, is it true that on that occasion also that you stood up at that conference? A. Yes, we— —

The Court: No, that is all. The question was whether you stood up.

The Witness: Yes.

1656 Q. Did you see Mr. Houck on that occasion? A. Question, please?

Q. Did you see Mr. Houck on that occasion? A. I don't remember.

Q. Did Mr. Houck, if you know, have an office in that building where there were chairs? A. Yes.

Q. Now, Mr. Pitzer, isn't it a fact that it was in Houck & Bros. office that you had this conversation touching you signing a contract with 807 and not in any place

designated as a union room? A. That had been talked over already in Houck's office. Whether it was that particular time or not I don't know.

Mr. Murray: Your Honor, may I have the answer stricken out?

The Court: Strike it out.

Mr. Murray: And the question repeated?

The Court: The reporter will repeat the question and the witness will give heed to it.

Q. (Read.) A. No.

Q. Now, are you able to tell us the purpose for which you went to Houck's office that morning? A. I went to 1658
Houck's office to talk over this with Raymond in regard to signing a contract to haul merchandise into the City.

Q. And in that conversation Raymond took you out into a hallway instead of a room to talk, is that it? A. No.

Q. Well, what is the fact, if you please? A. I did speak with Raymond in an office room on the same floor in a front room, sort of a conference room. I did talk to Raymond in there and I did talk to Raymond, Needelmann and Tony on the same floor in a sort of, as I said, a little hallway in the office, but whether or not Needelmann and Tony was into that conference room on the same floor or not I don't remember.

Q. Well, do you remember what you talked to Raymond 1659
about while you were in the conference room on that morning? A. I talked to him in regard to signing this contract.

Q. That was the gist of the conversation, was it? A. Yes

Q. About signing the contract? A. Yes.

Q. Now you testified before lunch, I believe, that you said to Needelmann and Venditti in substance that you wondered if there wasn't some way out besides signing

this contract. Did you say that substantially to them? A. Yes.

Q. In other words, did you ask them whether or not there wasn't some way of avoiding signing this contract? A. Yes.

Q. At that time did you say anything to them about the payment of any money if you didn't have to sign a contract? A. No.

Q. Did you say that to them at any time? A. No.

Q. In relation to any contract? A. No.

Q. Neither before or after you signed it? A. No.

Q. Or about breaking a contract? A. No.

1661 Q. Well, let us see: Did you ever have a room in the Times Square Hotel? A. Yes.

Q. When? A. Different times when I had been in New York.

Q. Did you have one there in 1937? A. I don't know.

Q. Did you have one there in the early part of 1938? A. I might have.

Q. How frequently between December 1, 1936, and June 1, 1938, did you have a room in the Times Square Hotel? A. I don't know.

Q. Can you give us a guess or an approximation of how many times? A. Between what times did you ask me?

Q. December 1, 1936, and June 1, 1938? A. I don't know. I was probably in New York on several different occasions during that time. I was in New York on several

1662 occasions during that time.

Q. And during the occasions you were in New York did you stop at the Times Square Hotel? A. I did.

Q. And on occasions did you stop overnight? A. I did.

Q. Did you register in the Times Square Hotel? A. I did.

Q. Now, tell me, did you ever see Needelmann or Venditti in the Times Square Hotel? A. I did.

Q. When? A. When I was there they met me there.

Q. When? A. In the evening.

Q. What date? A. I don't know.

Q. What year? A. I can't answer that.

Q. What month? A. They might have met me there during 1937. I know they met me there during 1938 and I know they met me there during 1939. Different times when I was in New York. It probably could have been when I made a trip up here in October, the latter part of October or beginning of November, 1937. I am not sure. I don't know.

Q. Let us see: When you made a trip here in October, 1937, you said that you had a conference in what was termed a union room and you in substance said you would think it over, whether you would sign a contract; is that your testimony? A. That is right. 1664

Q And then you returned to your home in Pennsylvania? A. Well, I probably stayed overnight. I don't remember whether I stayed overnight or not, now.

Q. Did you see either Needelmann or Venditti in the Times Square Hotel room on that October day when you talked first about the contract in New York? A. I don't think so, no.

Q. Well, will you fix, if you please, the time when you first saw either one of them or both in your room in the Times Square Hotel? A. I wouldn't fix a particular time of meeting them up there, without I knowed exactly what times I was at the Times Square Hotel.

Q. How many times did you come to New York during the year 1937 approximately? A. I don't know. 1665

Q. More than four? A. I might have; I don't know.

Q. Less than four? A. I don't know.

Q. How many times did you come to New York up to June 1st of 1938? A. I don't know how many times I was in New York.

Q. Have you got any idea? A. I know I was up here—I was here in the latter part of October and November.

I was here later on in the spring, probably around March or April, but I don't know just what times I might have been up here.

Q. Now, to get back for a moment to this initial conversation in October about the signing of the contract in which you say Needelmann told you had to be signed, did you say anything to Needelmann about it being possible to operate without signing the contract? A. Yes.

Q. Would you be good enough to give us, as precisely as you can, that conversation again? A. I asked Needelmann if he could not work my trucks if I paid him without signing a contract, and Needelmann said no.

1667 Q. Did you say anything to him as to how much, if he could operate your trucks by paying him directly, how much you wanted to pay him or how much you would pay him? A. No. I knew what their wages were per day.

Q. But is it true that Needelmann told you that you and he had to abide by the terms of the union? A. Yes.

Q. Did he tell you then and always that he could do nothing unless he complied with the rules of his union?

The Witness: Would you repeat the question, please?

Q. (Read.) A. Yes, he did.

Q. Did he tell you that he could not take any money for himself? A. No.

1668 Q. Didn't you tell him that you were offering to pay him himself so long as you did not have to sign a contract with the union? A. Sure; I would pay him for his day's work.

Q. Now, the contract was signed the 19th of November, 1937, wasn't it? A. That is right.

Q. Now, between the date that you met Needelmann and Venditti in New York in October and the signing of this

contract on the 19th of November, you did not again meet Needelmann and Venditti in New York, did you?

The Witness: Will you read the question, please?

The Court: The reporter will read it?

Q. (Read.) A. Yes, I met him after that November 19th.

Q. No, no, the question is—perhaps I have not made it clear— A. I don't think I understand it.

Q. You came in New York and you had this talk with Needelmann about a union contract around the 27th or 29th of October; is that right? A. That is right.

1670

Q. Then you returned home, didn't you? A. Right.

Q. And between that date of the 27th or 29th of October and shortly before you signed the contract on the 19th of November in your home in Pennsylvania, you did not see either Needelmann or Venditti; is that a fact? A. No, I did not.

Q. Did you invite them to go to Pennsylvania to see you? A. Not that I recall.

Q. Had there been a prior arrangement made between you and Needelmann or Venditti that they should go to your home in Pennsylvania? A. Not that I recall.

Q. Well, what did they do? Just walk into your office there unannounced? A. They rode down on one of my trucks.

Q. Without any prior arrangement? A. I don't recall 1671
knowing that they were coming that day, no.

Q. Did you communicate with them and ask them to come? A. Not that I recall.

Q. Did you tell them if they came down there that you would pay all their expenses? A. No, not that I recall.

Q. Did you pay all their expenses? A. I did pay their supper, night's lodging and breakfast. As I recall it, I paid that.

Q. Those were the three meals that they ate in your home town, weren't they?

The Court: No, only two. They did not eat the lodging.

Mr. Murray: Yes, that is right.

Q. Well, they slept in your home town that night, didn't they? A. Yes.

Q. You paid for it? A. Yes.

Q. You paid for their supper? A. As I recall it, I did, yes.

1673 Q. And for their breakfast? A. As I recall it, I did, yes.

Q. And how did they get back to New York, if you know? A. As I recall, on one of the trucks.

Q. So they had free transportation to your home town back and forth, their meals and their lodging at the hotel at your expense? A. Yes.

Q. Do you say now that you did not invite them down? A. I don't recall inviting them down, no.

Q. Did you consider them unwelcome visitors?

Mr. Cahill: I object to the form of the question, if your Honor please.

The Court: I will sustain the objection.

1674 Q. Was there any anger or strained feelings displayed between you and them? A. There probably was, yes.

Q. And yet you bought them their meals and lodging?

Mr. Cahill: Objected to as repetitious.

The Court: Sustained.

Q. Did you entertain them in your home? A. No.

Q. Did you introduce them to members of your family? A. Yes, I did.

Q. Was that the time one of them said he did not give a God damn about state or federal laws or anything like that? A. That is right.

Q. In your home? A. That is right.

Q. And when he used that language in your home what did you do about it? A. There wasn't anything I could do about it.

Q. Were they in your home by invitation? A. Yes. I told them to go to the house and talk.

Q. And when they used that language did you show them the door with the door open? A. No, sir.

Q. You said nothing? You want us to understand that either one of them or both of them used that character of language in the presence of members of your family? 1676

Mr. Cahill: I object to the form of the question.

The Court: I allow that.

Mr. Cahill: It is the form I object to, your Honor.

The Court: It is cross-examination.

The Witness: May I answer?

The Court: Yes.

A. Needelmann did.

Q. And you did nothing about it? A. No.

Q. You did not protest? A. No.

Q. Well, at that time did you have a thought in your mind that possibly by payment of money to these two men personally that you would not have to sign a contract with the union? A. No, sir. The money—— 1677

Q. It never occurred to you? A. The money——

Q. I don't mean——

Mr. Cahill: May he finish his answer, your Honor?

The Court: Yes.

Mr. Murray: I am sorry I interrupted. I thought you had finished.

The Court: Had you finished your answer?

The Witness: No.

The Court: You may. The reporter will read the question.

Q. (Read.) A. No, sir. The money I paid them was their day's wages for unloading.

Q. Now, in the preparation of this case did you ever tell the United States Attorney or any of his assistants that you had met Needelmann and Venditti in the Times
1679 Square Hotel?

Mr. Cahill: Objected to, unless a foundation is laid that he was asked.

The Court: Sustained.

Q. Now, will you fix the time when you did meet him in the Times Square Hotel, if you please, as nearly as you can? A. No, I don't think I am in a position to fix a time.

Q. Nor the year? Nor the year either? A. I talked to him in the hotel room at different times, and I don't know just what time it was that I talked to him.

Q. Now, what was the occasion of your talking to them in the Times Square Hotel room? A. That is where I
1680 was staying while I was here.

Q. Is it true that you did not meet him until after the contract had been signed in the Times Square Hotel? A. I don't know.

Q. Let me try to help you in your recollection. A. I don't recall meeting them in the Times Square Hotel before November, no, because I didn't know Needelmann until in October, as I recall it.

Q. The first time you ever saw him was probably the 27th or 29th of October; is that right? A. Yes, that is right.

Q. And then you went back home and you saw them again in your home around the 18th or 19th of November? A. That is right.

Q. And you certainly did not see him in the interim in the Times Square Hotel, did you? A. I don't recall seeing him up there at the time when I was here in October; no, I don't recall that.

Q. That is right. Now, the contract was signed on the 19th you said. Then you made your contract with the union, didn't you? A. Yes.

1682

Q. And so far as any further contract with Needelmann and Venditti was concerned, there was no necessity for it, was there? A. Yes, there was.

Q. What was there? A. There was a question as to payment for work for holidays; a question in their mind about not me putting stuff in here that they was not unloading; and we talked those things over occasionally when I met them.

Q. When did you talk those things over? A. At times when I would come to New York.

Q. In the Times Square Hotel? A. Yes.

Q. Did you invite them to meet you in the Times Square Hotel? A. Well, when we had something to talk over, I told them where I was and they could meet me at the hotel room.

1683

Q. Did you ever tell either one of them or both of them that you would give them $500 if they would break the contract with the union? A. No.

Q. That is positive, is it? A. Positive.

Q. Now, did you sign this contract, Government's Exhibit 9, after Needelmann and Venditti had left your home in Pennsylvania? A. After they left my home?

Q. Yes. A. No.

Q. Did you sign it after they left and then mail it to New York? A. No; they brought it with them, as I recall it.

Q. And you did not mail it? A. I don't recall mailing it. As I recall it, they brought it with them.

Q. Now, before this contract was signed, were you in the habit of sending telegrams to Downey stating when your trucks would be in New York?

The Witness: Give me that question again, please.

Q. (Read). A. I probably had wired Downey a time or so about trucks coming up here, yes.

1685 Q. And did you ask him to meet the trucks in your telegrams? A. Probably I did, yes.

Q. Well, don't you remember? A. I don't recall just the very words that was in the telegram at that time.

Q. Well, what was your purpose in sending a telegram if you did send it? A. To have him meet the truck to unload it.

Q. To unload it? A. Yes.

Q. Well, before you sent such a telegram or telegrams to Downey, had you met Downey? A. I don't recall whether I had sent him any telegrams before I had met him or not.

Q. Well, when did you first meet Downey if you did meet him? A. I did meet him, but I would not want to fix the date when I met him.

Q. Do you know what year it was? A. I would say it
1686 was around about 1937, probably around the latter part of October I was up here; that might have been the time I met Downey also.

Q. Do you know on how many occasions you sent telegrams to Downey and asked him to meet your trucks? A. I do not.

Q. Did you send telegrams to Needelmann and ask him to meet your trucks? A. I don't recall sending any. I might have sent some, but I don't recall it.

Q. Did you send telegrams to Venditti and ask him to meet your trucks? A. I don't recall that.

Q. Well, any telegrams that you did send to Downey, or if you did, to Needelmann, to what address were they sent? A. I don't know; I couldn't tell you that now.

Q. Have you got any records that would refresh your recollection that you brought along with you from Pennsylvania? A. I don't have no addresses with me.

Q. Have you got any in your office in Pennsylvania? A. I probably have, yes.

Q. If you sent telegrams, do you know whether you got the address of either Downey or the other—— A. I had a letter from Downey once which had his address on it, 1688
but I don't recall what the address is.

Q. When you started your trucking business, was your trucking concern a union concern; at least the help? A. I am not sure I have the question.

Q. Well, I will reframe it. Perhaps it is not definite. You started in business, as I understand it, in 1933; is that right? A. Yes, sir.

Q. Now, between 1933 and 1936 did your concern employ union drivers and helpers? A. No.

Q. Was there a union in your part of the country? A. There probably was, yes.

Q. How far is York from your home? A. From my home?

Q. Yes. A. 28 miles.

Q. Do you know whether or not there was what was 1689
called in that town, between 1933 and 1936, a union known as the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America? A. Pardon me, you asked me if I knew?

Q. Yes. A. Yes, I did.

Q. And do you know whether or not that was known as Local No. 430? A. It was, yes.

Q. After 1936 do you know whether or not any of your men belonged to that union? A. Yes.

Q. Who belonged to it that you remember? A. In 1937 I think all of my boys joined Local 430 in York.

Q. Was that after you signed a contract with Local 807 in New York? A. Right around the same time. I won't say for sure whether it was before or after.

Q. Now, when you sent a truck into New York from your place in Pennsylvania, say before November 19, 1937, did a helper always accompany the truck? A. Nearly always, yes. There was two men to a truck.

Q. Well, were there any occasions when the driver went
1691 alone? A. There might have been some few occasions when the driver went alone, yes.

Q. After you signed this contract with Local 807 in New York on November 19, 1937, was it your practice then to discontinue helpers going with the drivers? A. Yes, sir. I might finish that answer and say, on New York runs.

Q. Yes. And after the signature on this contract, Exhibit 9, how many helpers did you dispense with on your runs to New York? A. On all the trips into New York.

Q. On an average after November 19, 1937, are you able to tell us on an average how many trucks weekly it was that you sent into New York City with deliveries? A. That varies.

Q. Can you strike what you would call an average? A. We might send in one in a day, and we might have two or
1692 three in a week, and we might have 10 in a week; I would not want to make no statement as to the amount of trucks that would come in.

Q. Of course, your books would show the exact number, wouldn't it? A. Yes.

Q. Have you got them with you? A. No.

Q. Are they in Pennsylvania? A. Yes, sir.

Q. Now, were there occasions in a week after November 19, 1937, when there were daily trips made to New York

by your trucks, or, rather, by more than one of your trucks? A. (No answer.)

Q. Perhaps I have not made the question clear. I will try to clarify it. For instance, were there days or evenings or nights that more than one of your trucks started out from your home in Pennsylvania to New York to deliver merchandise into New York?

The Witness: Will you just read that question again?

Q. (Read) A. Yes, there was times when more than one started out.

Q. Well, were there times when you had as many as 1694
four or five trucks riding?

Mr. Cahill: Objected to as indefinite, your Honor. Riding where?

The Court: Sustained.

Mr. Murray: It is very palpable it is from his home town to New York.

Mr. Cahill: No, it does not say so.

Mr. Murray: All right.

Q. Did you understand the question, Mr. Pitzer? When I say trucks riding I mean from your home in Pennsylvania to New York City. A. (No answer.)

Q. Have I made myself clear? If I have not, just tell 1695
me. A. I don't understand your question.

Q. All right. Usually at least one truck a week left your place in Pennsylvania to deliver merchandise in New York City, is that right? A. I made the statement that we might have only had one truck in a week; there was times when we had one a day; there might have been several in one day.

Q. Well, that is what I was trying to find out. Was there ever a day when you can recall that you had three

trucks riding merchandise from your home town in Pennsylvania into New York City? A. Yes.

Q. Were there days when you had more than four trucks riding? A. There probably was.

Q. Did you ever have five trucks riding from your home to New York City? A. Probably, yes.

Q. On one day, I mean. A. Yes.

Q. Did you ever have six? A. I might have had; I don't recall.

Q. Well, do you remember whether or not you had as high as eight trucks riding on one day from your place in Pennsylvania into New York City for the delivery of merchandise? A. I don't recall that, no.

1697

Q. Well, at any rate, is it true, no matter how many trucks or how little or how few you had riding from Pennsylvania to New York, that after April or, rather after November 19, 1937, that you dispensed with the services of helpers in those rides to New York? A. Yes.

Mr. Murray: Your Honor, I think the hour for recess has come.

The Court: We will take a recess.

(Short recess.)

(The roll of the defendants was called.)

By Mr. Murray.

1698

(Last question and answer read.)

Q. Now were all your helpers licensed chauffeurs? A. Yes, sir.

Q. How old was the youngest? A. Probably 21 or 22. No one under 21.

Q. That is, you never permitted a chauffeur to drive under 21? A. No, sir.

Q. Do you remember how old Nolder was when he began to drive for you? A. When Nolder drove for me he was 21.

Q. Well now, was there any fixed time when your trucks left Pennsylvania to start for New York? A. No.

Q. Was there an accustomed hour when they ordinarily started from Pennsylvania to New York? A. That varied as to when we got our loads.

Q. Were there occasions when the chauffeur drove all night to get here? A. Yes.

Q. If he got in at 3 or 4 o'clock in the morning did you make any provision to house him in a hotel so he could go to sleep before he started to work in the morning? A. No.

Q. Did you give him any money for that purpose? A. They always had expense money. 1700

Q. You mean for sleeping accommodations?

Mr. Cahill: Objected to as not within the scope of the direct.

The Court: Sustained.

Q. Well now, how many tons of freight or merchandise did your trucks ordinarily carry? A. From 6 to 10 tons.

Q. Any more than 10 tons at one time? A. 12 tons.

Q. Have there been occasions when your driver worked continuously 30 hours? A. No.

Q. Or 20 hours? A. I don't think so.

Q. Or 24 hours? A. I don't think so.

Q. What is the longest length of time that you say any of your chauffeurs worked? A. On a trip they might have been out working 20 hours, but they still had time off in that time, several hours. 1701

Q. Was there any occasion when they left Pennsylvania to deliver merchandise to New York when they didn't return back to Pennsylvania for a period of over 30 hours? A. There might have been, yes.

Q. Do you know whether or not there were? A. It is possible, if they couldn't get unloaded and they had to lay over another day.

1702 *H. Earl Pitzer—For Government—Cross.*

Q. I don't mean laying over, I mean taking a load from Pennsylvania, coming to New York, making various deliveries in New York and returning to Pennsylvania. My question is addressed as to whether or not that sometimes took 30 hours or more? A. No.

Q. Never at any time that you know of? A. I don't recall any time, no.

Q. Well, you have records, haven't you? A. I have.

Q. As to the length of time each trip consumed, haven't you? A. Yes.

Q. They are in your possession down in Pennsylvania, aren't they? A. That is right.

1703 Q. Did you have a system of keeping what they call, or rather directing your chauffeur to keep what they call, time cards? A. No. We have a driver's report sheet, and also a driver's log which is in line with the Interstate Commerce Commission rulings.

Q. What was the driver's log? A. The driver's log is his hours of driving, which is in line with the laws of the Interstate Commerce Commission.

Q. Well, were there any state provisions for keeping a log before 1938?

Mr. Cahill: I will object to that, calling for a matter of law.

The Court: Sustained.

Mr. Murray: Exception.

1704

Q. Have you kept all records of driver's logs which have been turned in to you? A. Since a ruling went into effect by the Interstate Commerce Commission, yes.

Q. All of them? A. Yes.

Q. A moment ago we spoke about Local 430 of York, Pennsylvania. Did you ever have a written contract with Local 430?

Mr. Cahill: Objected to as not within the scope of the direct and immaterial to the issues here.

The Court: I will allow it. Answer yes or no.

The Witness: May I have the question?

Q. (Read) A. No.

Mr. Murray: That is all.

Redirect examination by Mr. Ennis.

Q. Mr. Pitzer, about these telegrams you sent to Downey: did you ever send such a telegram before your trucks were stopped in New York City? A. No, sir. 1706

Mr. Murray: I object to it as leading and suggestive.

The Court: Sustained. Strike out the answer.

Q. Mr. Pitzer, do you remember the time at which your trucks first began to be unloaded by City men? A. I would say that some of that started back probably in 1936.

Q. Do you remember when you first sent a telegram to Downey? A. I don't.

The Court: Well, when was it with respect to the contract in evidence, Exhibit 9?

The Witness: It would be before that. 1707

Q. Was it before this time in 1936 when you said your trucks were first stopped? A. I sent the telegrams after my trucks were stopped in New York; when they were started being stopped, that is the time he got telegrams from me.

Mr. Ennis: That is all.

HARRY M. WOOD, residing at Biglerville, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Wood, by whom were you employed in 1937? A. H. Earl Pitzer.

Q. What work did you do for Pitzer? A. Drove a truck.

Q. Did you drive a truck for Pitzer into New York City? A. Yes, sir.

Q. In 1937 did you unload the trucks yourself? A. The early part, yes.

1709

Q. When did you stop unloading them? A. In the latter part of 1937.

Q. Who began to unload them then? A. 807 Union.

Q. Do you know any individuals who began to unload them?

Mr. Maguire: I move that it be stricken out.

The Court: Denied.

Mr. Maguire: Exception.

Q. Do you know any individual who began to unload them then? A. Yes, s

Q. What was the na of such individual? A. George Needelmann.

Q. Will you look around the court room? Stand up and

1710 see if that George Needelmann is here. Step down and look around if you wish. A. Yes, sir.

Q. Will you state where he is in the court room? A. He is in the back row (indicating).

Q. You better come down and point him out. A. In the back row, four from the left side.

Q. Will you step over and point him out? A. (After leaving stand and walking about court room). Back of me (indicating).

Q. In the last row directly in back of you?

(A man stood up.)

The Court: Is that the man who stood up?

The Witness: Yes, sir.

The Court: The clerk will call the name of George Needelmann.

The Clerk: George Needelmann.

(A man stood up.)

The Court: All right. The person who rises is the person indicated by the witness.

Q. When did you first meet George Needelmann? A. In the latter part of 1937. 1712

Q. Where? A. New York City.

Q. Were you driving your truck at the time? A. Yes, sir.

Q. Do you recall where in New York City it was? A. North Moore Street and Greenwich Street.

Q. What did Needelmann say to you? A. He said I had to have a City man to unload.

Q. What did you say? A. I said I didn't know about that.

Q. What else was said? A. Oh, he said, "You will have to." And I said, "I don't think I have to." So I went to the receiving clerk and I asked him about it.

The Court: No, you can't state the conversation you had with the receiving clerk. You had a talk with the receiving clerk and then what did you do? 1713

The Witness: I asked him if I had to have——

The Court: No. You can't tell what you said to him; but after you talked with the receiving clerk what, if anything, did you do?

The Witness: I unloaded.

The Court: Did anybody assist you?

The Witness: No, sir.

Q. Had you unloaded your truck at all before you talked to Needelmann at that time? A. Yes, sir.

Q. You had begun to unload? A. Yes, sir.

Q. How much of your truck was unloaded? A. Practically all of it.

Q. What did Needelmann say about unloading the rest of it? A. Nothing.

Q. Did you unload the rest of the truck? A. Yes, sir.

Q. And you had no discussion with Needelmann about unloading it? A. No, sir.

Q. Did you pay Needelmann any money at that time? A. No, sir.

1715

Q. Was there any discussion with Needelmann at that time about paying him any money? A. No, sir.

Q. Was any one with Needelmann at the time? A. There was; but I don't recall who it was.

Q. Did you have any conversation with him in Needelmann's presence? A. No, sir.

Q. Did either of these persons, Needelmann or the person with him, unload any part of your truck? A. No, sir.

Q. Did you have a helper with you? A. No, sir.

Q. When did you next see Needelmann? A. I don't know exactly when.

Q. Well, you placed this first occasion in the latter part of 1937, is that correct? A. Yes, sir.

Q. Did you see Needelmann again within a month or a year? A. Yes, sir.

1716

Q. Within what period? A. A month.

Q. Do you remember that occasion? A. Yes, sir.

Q. Do you remember the conversation with Needelmann on that occasion? A. He was already in our employ then.

Q. He was in your company's employ at that time? A. Yes, sir.

Q. Where did you meet Needelmann on that second occasion? A. Beach and Hudson Streets.

Q. What did he say to you? A. Nothing.

Q. Did you say anything to him? A. No, sir.

Q. Did you unload your truck on that occasion? A. I helped to unload it.

Q. Whom did you help? A. Needelmann.

Q. Did you pay him any money on that occasion? A. No, sir.

Q. Did you ever pay him any money yourself personally? A. No, sir.

Q. Did you ever give him a check? A. Yes, sir.

Q. Did you give him a check on that occasion? A. I don't recall, sir.

Q. Did you give him a check on the first occasion when you had your first conversation with him? A. No, sir. 1718

Q. Did you ever observe Needelmann working for any other trucker in your presence?

Mr. Boudin: I object to that.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: Yes or no.

The Witness: Yes, sir.

Q. At what time? Will you try and place the time at which you saw Needelmann working for some other trucker in your presence?

Mr. Boudin: The same objection. 1719

The Court: Overruled.

Mr. Boudin: Exception.

A. Will you ask the question again?

Q. (Read.) A. In the latter part of 1937 or early part of 1938.

Q. Do you know what other trucker you saw him working for in your presence?

Mr. Boudin: Same objection.
The Court: Overruled.
Mr. Boudin: Exception.

A. Yes, sir.

Q. What was the name? A. Fowser Bros.

Q. Where did this occur? A. Beach and Hudson Streets.

Q. What was Needelmann doing on Fowser's truck?

Mr. Boudin: He has answered already.
The Court: Overruled.

1721

Q. What was he doing? A. Unloading it.

Q. Do you know what commodity he was unloading? A. Glass.

Q. Did Needelmann on that same day do any work for you?

Mr. Boudin: Objected to.

A. No, sir.

The Court: Overruled.

Q. He did no work for you on that day? A. No, sir.

Q. Do you recall any occasion on which Needelmann worked with you and the same day you observed him working for another trucker?

1722

Mr. Maguire: I object to it.

A. No, sir.

The Court: Sustained.
Mr. Maguire: Withdrawn.
The Court: Strike out the answer.

Q. Do you recall any occasion upon which Needelmann or anyone else whom you had seen in his presence was paid by you personally for a truck that you unloaded?

Mr. Maguire: Objected to. It is leading.

(Question read.)

Mr. Maguire: Further, your Honor, it is not binding on Needelmann or any of the defendants.

The Court: I will sustain the objection.

Q. Do you know the names of any other persons that you saw with Needelmann on those occasions when he unloaded for you? A. Yes, sir.

Q. What is such a name? A. Tony Venditti was with him. 1724

Q. Will you look around the court room and tell the Court and jury——

The Court: Let us find out if there are any others so he won't have to leave the stand more than once.

Q. Do you know the names of any others whom you have seen with Needelmann? A. I saw Frankie Downs with him.

Q. Frankie Downs? A. Yes, sir.

Q. Any others? A. One by the name of Bern—Bernie.

Q. Bernie? A. Bernie, they call him; I don't know his full name. 1725

Q. Is that the only name you have heard him called by? A. Yes, sir.

Q. Bernie? A. Yes.

Q. Do you know the names of any other persons you saw on those occasions with Needelmann? A. No, sir.

Q. Did you see other persons whose names you don't know with Needelmann and Tony and Downs? A. Yes, sir.

Q. Will you look around the court room and tell the Court and jury if you see any of those persons in the court room.

The Court: You better go down there so you can indicate who it is.

A. (After leaving stand and going down in court room) Bernie (indicating).

The Court: Which one?

(The witness indicated.)

Mr. Ennis: Will the clerk call the name of Randazzo?

1727

The Clerk: Bernard L. Randazzo.

(A man stood up.)

The Court: That is the man you refer to as Bernie?

The Witness: That is right.

The Court: Anyone else?

The Witness: Tony Venditti (indicating). Frankie Downs (indicating).

The Court: Any others?

The Witness: No, sir.

Q. Do you remember any occasion upon which any of those persons whom you have identified received pay from you personally upon an occasion when you unloaded

1728 the truck and they didn't assist you?

Mr. Boudin: I object to that.

The Court: I sustain the objection.

Q. Upon the occasion of this first conversation with Needelmann was there anyone with him? A. Yes, sir.

Q. When you looked around the court room did you see that person here? A. I don't recall whether he was here or not.

Q. But it is not one of the persons you identified? A. To the best of my knowledge, no.

The Court: You haven't seen him here?

The Witness: No, sir.

Q. Upon this first occasion when you saw Needelmann and this other person, did you speak to them before you began to unload? A. Yes, sir.

Q. But they did not unload the truck? A. No, sir.

Q. You unloaded it? A. Yes, sir.

Q. And you paid them no money? A. No, sir.

Q. Did they ask for any money? A. No, sir.

Q. I show you this paper. Does this refresh your recollection about your first conversation with Needelmann? 1730

Mr. Boudin: If your Honor please, I do not think there has been a foundation laid for it.

The Court: Is that a comment or is it an objection?

Mr. Boudin: No, it is an objection.

The Court: Overruled.

Mr. Boudin: An objection on the ground that—

The Court: Overruled.

Mr. Boudin: Exception.

The Court: When did anybody ever have to lay a foundation to submit something to a person to see whether it refreshed his recollection?

Mr. Boudin: Well, he must exhaust his recollection first. That is what I call a foundation. 1731

The Court: Overruled.

Q. Does that refresh your recollection about this first conversation——

The Court: No, don't tell him. Just ask him if it refreshes his recollection. That is the question.

A. No, sir.

Q. It does not refresh your recollection?

The Court: Mark the paper for identification so we will know what the witness referred to.

(Marked Government's Exhibit 11 for Identification.)

Q. Mr. Wood, I direct your attention specifically to the bottom of the first page of Government's Exhibit 11 for Identification and ask you again, does that not refresh your recollection about your first conversation?

1733 Mr. Maguire: Objected to, sir, as already having been answered.

The Court: I will allow it.

Mr. Maguire: Exception.

A. Well, the only thing I can say——

The Court: No. Does it refresh your recollection?

The Witness: Some, yes.

Q. Now, with your recollection refreshed will you state your conversation with Needelmann on that occasion?

Mr. Boudin: I object to that unless it is limited
1734 to any new matter.

The Court: Overruled.

Mr. Boudin: Exception.

A. Well, the only statement I can make of that——

The Court: No, just answer the question without a prelude.

Q. Will you state what you said and what Mr. Needelmann said. A. He said I would have to put a City man on.

Q. Yes? A. And I said I didn't know why.

The Court: Is that all?

The Witness: I said I could not pay $9.42 for just what I had on. I only had a little bit on.

Q. What did he say to that? A. He said we would have to pay to get unloaded.

Q. And what did you say? A. I didn't say no more then.

Q. Who first mentioned the sum $9.42 in that conversation? A. Needelmann. 1736

Q. What did he say? A. He said I would have to pay $9.42 to get unloaded.

Q. Did he say to whom you would have to pay it? A. No.

Q. Did he say anything else about the $9.42 in addition to the statement that you would have to pay it? A. Will you state that question again, please?

Q. Did he say anything else about the $9.42 except the statement that you would have to pay it? A. He said I would have to pay $9.42 to get unloaded, that is all.

Q. Did you make any statement to him then about the amount of the load you had left?

1737

Mr. Boudin: I object to that.

The Court: Yes, I will sustain the objection.

A. Yes, sir.

The Court: Strike out the answer.

Q. After Needelmann told you you would have to pay $9.42 to unload, what did you say?

Mr. Maguire: Objected to as already gone into.
The Court: He has already gone over that.

Q. Do you recall how many cases you had left on your truck? A. I had about 50 cases.

Mr. Maguire: I object.
The Court: I will allow that.

Q. Not unloaded at that point? A. Sir?
Q. How many cases were left? A. 50 cases.

By the Court.

1739

Q. That was at the time of this conversation? A. Yes.
Q. You had 50 cases remaining to be unloaded? A. Yes.

By Mr. Ennis.

Q. How long did it take you to unload that?

Mr. Boudin: That is immaterial. Objected to.

A. About 8 to 10 minutes.

The Court: I will allow it.
Mr. Boudin: Exception.

1740

Q. Do you recall any conversations at later times with Needelmann? A. Yes, sir.
Q. Did you have such conversations after the first conversation and before June 1st of 1938? A. I don't get your question, sir.
Q. The first conversation——

The Court: Just leave out "the first conversation", if you will permit a suggestion, because a later conversation must be after the first conversation.

Mr. Ennis: I am just trying to fix it.

The Court: Ask him if he had any further conversations before June 1st, and that is all there is to it.

Q. Did you have further conversations with Needelmann before June 1, 1938? A. Yes.

By the Court.

1742

Q. When? A. That I don't recall, sir.

Q. How long after the first conversation did you have the second conversation? A. I don't know, sir.

Q. How many conversations did you have between the first conversation and the first of June, 1938? A. Well, we had quite a few conversations.

By Mr. Ennis.

Q. During any one of those conversations did Needelmann say anything about unloading the trucks of other operators other than Pitzer, your employer? A. He did not to me, no.

Q. He did not to you? A. No.

1743

Q. Did any of the other persons whom you have identified today have such conversations with you before June 1, 1938? A. No, sir.

Q. What is it? A. No, sir.

Q. In one of these conversations with Needelmann in 1937 did he say anything to you about hiring City men?

Mr. Boudin: I object to that as already answered.

1744

The Court: Hasn't that already been covered?

Mr. Ennis: Well, if the Court please, I am trying to find out all that was in these conversations.

The Court: Yes, but I mean, try to find out something that has not been testified to and not cover something that has already been said.

Mr. Cahill: I think you can take our assurance, your Honor, that we are not seeking to go over something that has already been said.

The Court: Hasn't this already been testified to?

Mr. Cahill: If your Honor please, the witness has not exhausted his recollection by a good deal.

1745

The Court: I will allow it as a matter of discretion. You may answer. Do you understand the question, sir?

The Witness: No, sir.

The Court: The stenographer will read it.

Q. (Read.) A. He said we would have to have City men to unload.

Q. Did he say anything more about it? A. He said if we did not hire them there would be other City men that would unload it.

Q. Was there anything further? Did he say anything about how many men you would have to hire, how many City men?

1746

Mr. Boudin: I object to that.

The Court: Yes or no. Overruled.

A. No, sir.

Q. Did he say anything to you about how many men there were in his union? A. He said there was 15,000 in the union.

Q. Did he say anything else about that?

Mr. Boudin: I object to that.
The Court: Sustained.

A. He said there was 15,000 in the union——

Mr. Boudin: Wait. That is objected to.
The Court: Well, I do not think I will strike it out if he repeats it again.

Q. Well, what did he say to you on that occasion? A. He said there were 15,000 men in the union——

Mr. Boudin: I understood your Honor sustained that objection. 1748
The Court: No, not that objection.

A. (Continued) And there was enough men at the local that they could force us to hire City men to unload.
Q. Did he say anything to you about your continuing to unload without City men?

Mr. Maguire: Objected to as leading and suggestive.
The Court: Yes, I think it is.

By the Court.

Q. Have you exhausted your recollection now on what Needelmann said to you? A. As far as I can recall now. 1749

Mr. Ennis: That is all.
The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Mr. Wood, I understand you to say the conversation that you had with Mr. Needelmann was in the latter part of 1937? A. Yes, sir.

Q. That is the first time you met him, was it? A. Yes, sir.

Q. And do you recollect what time of the day it was, whether it was the morning or the afternoon? A. Right after lunch.

Q. Now, had you come in with a load from Pennsylvania? A. Yes, sir.

Q. And do you know what ton truck you were driving? A. You mean the capacity of the truck?

Q. Well, was it a 5-ton truck or a 10-ton truck or—— A. There was a small trailer.

Q. Well, how many tons did you car on that day? A. Well, I don't recall the amount of it.

1751

The Court: Well, what was the capacity of the truck?

The Witness: 10-ton.

Q. Did you get in at 1 o'clock? A. No, sir.

Q. From Pennsylvania? A. No, sir.

Q. What time did you get in? A. About 8 o'clock in the morning.

Q. What time did you leave Pennsylvania? A. About 2 in the afternoon before.

Q. Did you stay any place overnight? A. Yes, sir.

Q. Where did you stay? A. Unionville, New Jersey.

Q. And what time did you start from Unionville, New 1752 Jersey, to New York? A. About 6.30 the next morning.

Q. Then you drove till about one, did you? A. 12 or one.

Q. Now, what time did you get done unloading your truck? A. About a quarter after one; half past one.

Q. Then did you start back for Pennsylvania? A. Yes, sir.

Q. Did you have only one delivery on that day? A. No, sir.

Q. Where else did you deliver to? A. Well, I don't know that.

Q. Well, were the deliveries all in the lower part of Manhattan? A. Most of them, I would say.

Q. Did you have any delivery in Brooklyn? A. I don't know.

Q. Do you remember whether you had any pickups on your way back? A. No, sir; no pickups.

Q. Then after this conversation with Needelmann did you start back from Pennsylvania? A. Yes, sir.

Q. Do you remember when you got home that night or that day? A. No, sir.

Q. Did you go straight home? A. Yes, sir.

Q. And that was how long a drive? A. About 7 hours.

Q. You had no helper? A. Not that time, no. 1754

Q. You drove in alone? A. Yes, sir.

Q. Did you drive back alone? A. Yes, sir.

Q. How many hours did you work from the time you left Pennsylvania up to the time that you got back to Pennsylvania? I mean on the delivery of this particular load we talked about? A. Well, I will have—I worked about 8 hours and then slept for a while.

Q. How many hours did you sleep? A. Well, I slept from one to 6.30.

Q. You had about 5 hours' sleep, was it, 5½? A. 5½ or 6.

Q. Out of how many hours' work did you have the 5½ hours' sleep? A. About 18 hours, 20.

Q. You left Pennsylvania about what time to come to New York? A. About two, three. 1755

Q. Then you slept five or six hours? A. Yes, sir.

Q. Then you got back to Pennsylvania when? A. I don't know.

Q. Well, if you left here at one o'clock in Manhattan and drove continuously back to Pennsylvania, how long would that ordinarily take you? A. It was an empty truck. About seven hours.

Mr. Murray: That is all.
The Court: Anything further?
Mr. Ennis: That is all.
(Witness excused.)

The Court: Next witness.
Mr. Marks: Mr. Dillman.

FRANCIS DAVID DILLMAN, residing at 1729 Clifford Avenue, Rochester, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

1757

Direct examination by Mr. Marks.

Q. Mr. Dillman, where were you employed in 1937? A. Perry's Express; operator.

Q. Will you keep your voice up just a little more, please? A. Yes.

Q. Where is that located? A. Buffalo, New York.

Q. And what type of business is it? A. Truckman.

Q. When did you first go to work for Perry? A. The latter part of 1936.

Q. Do you remember what month? A. Around December; some place in there.

Q. And how long did you work for Perry? A. Up until 1938.

1758

Q. What part of 1938? A. I beg your pardon, I should say 1939. Let's see—1939.

Q. What part? A. The first part of 1939.

Q. You worked as a truck driver? A. That is right.

Q. Between what points did you drive your truck? A. Buffalo, New York.

Q. And when you drove from Buffalo to New York how did you come down? Just tell us briefly. A. From Buffalo

to Rochester; from Rochester to Albany; Albany down to Jersey City, and then across.

Q. By what means did you get into the City? A. Either by the tunnel or the ferry.

Q. About how many trips a week did you make into New York in 1937? A. Sometimes twice a week and sometimes once a week.

Q. Now, do you recollect the first trip you made into the City? A. Approximately, yes, sir.

Q. Do you recollect stopping at a gas station? A. Yes, sir.

Q. Where was that? A. Minute Men's Service Station, Jersey City. 1760

Q. Did you see anyone there? A. There was quite a few trucks there.

Q. Did you see anyone else? A. No, I did not.

Q. Will you stand up, Mr. Dillman, and look around this court room and tell us if you see anyone here whom you saw on that occasion at the Minute Men's Gas Station. A. Mr. Weinheimer.

Q. What is his first name, do you know? A. Edward.

Q. Will you point him out, please? A. He is sitting in the back row in the second last seats

Q. From which end? A. From this end.

Q. From the right? A. My right.

The Court: The clerk will call the name Edward Weinheimer. 1761

The Clerk: Edward Weinheimer.

(A man stood up.)

The Court: Is that the man?

The Witness: Well, there is two there just alike.

The Court: Go down and point out the man that you say you met.

The Witness: (Leaving stand) The fellow right here in the back, Edward Weinheimer.

The Court: You have got another defendant Weinheimer on there. Do you recall his name?

Mr. Marks: John Weinheimer.

(A man stood up.)

The Court: Is the man now standing in response to the call John Weinheimer the man you mean?

The Witness: No, this is Edward Weinheimer here; that is the man I mean (indicating).

The Court: The one who stood up first?

The Witness: Yes, sir.

The Court: But did not stand up in the position where the person was whom you first identified?

1763 The Witness: That is right.

Q. You can return to the stand now, Mr. Dillman, and be seated. A. All right (returning to stand).

Q. Do you remember the date of that trip? A. No, I could not tell.

Q. Can you tell us the month? A. If I ain't mistaken it is around December.

Q. Of what year? A. 1936.

Q. Now, will you tell us what conversation you had there with Weinheimer?

Mr. Boudin: I object to that, if your Honor please, on the ground that it can have no possible
1764 relation with the crime charged in the indictment. As I understand it, these were trips from Buffalo to New York City, and the mere fact that they have taken part in it on the other side of the river, I don't think makes it interstate commerce.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Will you tell us the conversation, Mr. Dillman? A. Well, he told me I had to have a union man on the

truck, and I told him that my boss, Mr. Perry, did not say anything to me about having a union man to unload my truck.

Q. Did he say what union? A. He said Local 807.

Q. What did he say to you then? A. He said I could not unload unless I had a man on.

Q. What did you reply? A. I told him if I was supposed to get a man I would get a man, but I did not think I needed any. He said I could not unload unless I got a local man.

Q. Was there anything further said then? A. Not that I recall.

Q. Where did you go from there? A. Where did I go from there? 1766

Q. Yes. A. I went over and unloaded.

Q. Well, where did you go to unload? A. I went to Brooklyn.

Q. Do you remember where in Brooklyn? A. I can't just tell you exactly the name of the street, but it was some furniace company.

Q. Now, did you see Weinheimer again that day? A. Yes, sir.

Q. Where did you see him? A. He followed me right over there.

Q. How did he get there? A. By his own car.

Q. And how long after you arrived at the scene did you see him? A. Oh, I should judge about ten minutes.

Q. What did you do then? A. I started unloading. 1767

Q. Did you have any talk with him while you were unloading? A. No, I didn't.

Q. Where was he while you were unloading? A. He was out in front of the truck.

Q. How close to the truck? A. Well, he walked around the front of the building there. I should judge about ten feet; something like that.

Q. How long did it take you to unload? A. About approximately 20 to 25 minutes.

Q. What happened when you finished unloading?

Mr. Boudin: I object to that.

The Court: Well, I will sustain the objection.

Q. Well, did you have any conversation——

The Court: You can ask if he had any conversation with Weinheimer or if Weinheimer did anything.

1769 Q. Did you have any conversation with Weinheimer when you finished unloading? A. Yes, I did, after I pulled the truck out from the platform.

Q. Will you tell us the conversation? A. He said I owe him $9.42.

Q. Did he say for what? A. He said for unloading the truck.

Q. What did you say? A. I told him he didn't help me unloading.

Q. What did he say? A. He said he covered the truck. No other union could get hold of it.

Q. What did you say? A. I told him I couldn't see why another union couldn't come out, why he had to stand there and cover the truck. He said, "We got to get $9.42 before you can get out of here." So I had to pay him.

1770 Q. Did you pay him that day? A. I did.

Q. Did he do any work on the truck that day? A. No, he didn't.

Q. How did you pay him? A. I paid him in cash.

Q. Now, when did you next see Weinheimer? A. I next seen Weinheimer out at Piel's Brewery, Brooklyn.

Q. How long after that? A. The same day.

Q. Will you tell us what happened there? A. I loaded a load——

Mr. Boudin: Same objection.
Mr. Marks: I withdraw it.

Q. Did you have any conversation with him there?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

Q. Tell us the conversation. Well, after I got through unloading—after I got through loading he told him I owed him another $9.42.

Q. That was the same day? A. That was the same day.

Q. Tell us the conversation in full, please. A. I asked 1772
him what it was for and he said for loading the truck and I said, "I did pay you $9.42 for unloading and loading," and he told me that it was just for loading—unloading that I paid $9.42, and this was for loading, and I told him I wouldn't pay him because I didn't have the money. I give him almost the last bit of money I had. He was going to tie up my truck there.

Q. Is that what he said? A. Yes.

Q. Go ahead. A. I told him he couldn't tie up my truck because I had to have this load of beer in Buffalo.

Q. Is that what you were picking up there? A. That is right. He said something about going after some more fellows to keep my truck there, to tie up my truck before I got out of the City.

1773

Q. What did he say about that? A. He said he was going after some more fellows. I said, "Go ahead." I got in my truck and drove away from Piel's Brewery. I drove right over the Manhattan Bridge and right out of the City and came on into Buffalo. I didn't see him then for that day.

Q. Did he help you load your truck? A. No, he didn't.

Q. Did he put a hand on your truck that day? A. No, sir. When I was loading at Piel's Brewery he was sitting out in front in a car.

Q. Now, when did you next see him, Mr. Dillman? A. I next seen him shortly afterward when I came back down again.

Q. Was that your next trip down? A. I couldn't say whether it was the next trip or whether I had made some trips in before at that time because I had come into Jersey and went back out again.

Q. That is, without coming to New York? A. That is right.

1775 Q. Did you see him on your next trip to New York? A. I believe I had seen him the next trip to New York.

Q. Now, will you tell us what happened then? A. He didn't stay around. There was another fellow that was with him stayed with me.

Q. That is on this second trip? A. On the first trip—whichever it was.

Q. Do you know the name of the other fellow? A. No, I don't.

Q. Did you see him in this court room before? A. No, I didn't.

Q. Do you want to look around now and see if you can find him?

The Court: Have you ever seen him since?

1776 The Witness: Well, I seen him once or twice. No, I don't believe I see him.

Q. Did you ever see this second man of whom you are now speaking in the company of Weinheimer? A. Yes, I have seen him in the company of Weinheimer.

Q. What did you say to that second man and what did he say to you on this trip of yours we are speaking of? A. Weinheimer made him go with me.

The Court: No. Did you hear Weinheimer say anything to him?

The Witness: Weinheimer told him to go with me.

Q. Give us the entire conversation as well as you can remember it today. A. Well, Weinheimer told him to go with me, to help me unload. We went out and unloaded.

Q. Did he help you unload? A. No, he did not.

Q. Did you pay him any money? A. Yes, I did. I paid him $9.42.

Q. Did you have any conversation with him about the payment of the money? A. No, I don't believe I had. 1778

Q. Now, between your first trip to New York in December, 1936, and the 1st day of June, 1938, can you estimate for us the number of times that you saw Weinheimer in New York City? A. Well, that is pretty hard to say because I came down here quite often.

Q. Well, can you tell us how often you saw him compared with the number of trips you made here? A. I saw him approximately almost every trip I came in.

The Court: How many trips did you make that you didn't see him?

The Witness: Oh, I should judge about five or so.

Q. And I believe you said you made about one trip a week on the average? A. On an average about one trip 1779
a week.

Q. Did you pay him money every time you saw him? A. Yes, sir.

Q. How much? A. $9.42.

Q. Did Weinheimer ever in that entire period help you load or unload your truck? A. He did not.

Q. Did you have any further conversations with him about loading or unloading your truck? A. Oh, I had quite a few arguments with him.

Q. Will you tell us what was said by you and by him?

Mr. Boudin: Objected to, if your Honor please.

The Court: On what ground?

Mr. Boudin: On the ground that it is not binding on anybody. It is apparently an individual matter that has nothing to do with any union.

The Court: It is certainly binding on Weinheimer, isn't it?

Mr. Boudin: Not in this case.

The Court: Overruled.

Mr. Boudin: In order to bind Weinheimer it must be a part of the conspiracy. Exception.

1781

Q. Will you give us those conversations now? A. Well, I told him if I had to pay $9.42, why he didn't help to unload the truck. He said he didn't have to unload it. He was there just to cover the truck.

Q. Do you remember any other phrase that he used? A. He swore at me several times.

Q. What did he say? A. He called me a son-of-a-bitch.

Q. Tell us anything you can remember that he said. A. We had quite an argument there that day about this $9.42.

Q. Tell us what Weinheimer said. A. Well——

Mr. Boudin: I object to that.

The Court: Overruled.

1782 Mr. Boudin: Exception.

The Witness: One day there he was going to knock off my block because I told him he had to help me unload or else I would throw the stuff at him.

Q. What was the rest of the conversation?

Mr. Boudin: The same objection.

The Court: Overruled.

A. He was going to knock my block off and he was going to fix me so I couldn't come down to New York any more. He was going to report me to the local in Buffalo.

Q. Do you remember anything else that he said? A. That is all I can remember right know.

Q. During this entire period from the first trip you have spoken of to June 1, 1938, did Weinheimer ever drive your truck? A. Yes, he drove it about two blocks.

Q. How often did he drive it? A. Just that once, about two blocks, and he almost hit a child and I told him to get out from behind the seat, I would do the driving.

Q. On every other occasion except for those two blocks 1784
who drove the truck? A. I drove the truck.

Mr. Marks: That is all.

The Court: Well, we will adjourn until Monday morning at half-past ten, and I feel it is unnecessary to admonish you members of the jury with respect to not discussing this matter with anyone or permitting anybody to discuss it with you or even to approach you to discuss it.

(Adjourned to April 22, 1940, at 10.30 A. M.)

New York, April 22, 1940. 1785
10.30 A. M.

TRIAL RESUMED.

(The clerk called the roll of defendants and one was absent.)

The Court: Mr. Maguire, do you want to make an application before the jury is brought in?

Mr. Maguire: Yes.

(Discussion off the record.)

Mr. Cahill: There is a third matter, your Honor, befor we bring the jury in: Your Honor directed the witnes Strozyk to return here Friday at 2 o'clock.

The Court: Yes, and no one said anything about it.

Mr. Cahill: And he was here.

The Court: And I brought it up myself.

Mr. Cahill: He was here.

The Court: He should have made his presence known

Mr. Cahill: I thought that was the duty of counse who asked to produce him.

The Court: No. It was really my duty to call him u
1787 and I didn't think of it until we adjourned.

Mr. Cahill: Well, he was here.

The Court: As a matter of fact, I was in doubt in m own mind whether I said Monday or Friday. I remem ber discussing both dates and I found by reference to m notes that I finally fixed it for Friday afternoon, but I was under the impression that it was Monday. However the fact that he was here should have been communicate to someone on your staff and if that had been then brough to my attention I would have in turn brought it to th attention of defendants' counsel, by requesting that the then proceed with the cross-examination.

Mr. Cahill: He is not here this morning. Now if coun sel want him, we can arrange another early date and hav
1788 him here.

Mr. Maguire: At his convenience. I do desire to ex amine him further.

The Court: In view of the fact that the man was her and that he comes from out of town I think it ought t be at his convenience, but that does not mean that he ca postpone it until the end of the trial. It should be within a reasonable time. So I suggest that you communicate with him or have him communicated with and let him fix a

date and advise us. Impress him, of course, that it must be within a reasonable time, but at the same time at his convenience.

Mr. Cahill: We will do that, your Honor.

The Court: Now you may bring in the jury. Is there any defendant in this case who by reason of religious affiliation celebrates the Jewish Passover which begins tonight.

(Several defendants stand up.)

The Court: All right. Before the jury comes in I again notice the absence of one of the defendants and I am calling it to your attention, Mr. Maguire.

(The jury entered the court room.) 1790

The Court: Let the foreman of the jury step up here just a moment.

(Conference at the bench between the Court and the foreman of the jury.)

Mr. Cahill: Judge, Mr. Maguire asks if we may step up?

The Court: Yes, certainly.

(Conference at the bench between the Court, Mr. Cahill and Mr. Maguire.)

The Court: One of the defendants is absent, and, of course, under the law we cannot go on with the trial in his absence. He, of course, was required to be here at 10.30 and it is now a quarter to eleven. Under the circumstances I will declare a recess in this case until half-past eleven and I will send word to the residence or send someone to the residence of the absent defendant to find out where he is. I am sorry for this interruption and delay, but in the meantime I will ask the foreman to take up with the members of the jury a personal matter which I discussed with him when he came up to the bench. You may go to the jury room and be prepared to return here at 11.30. 1791

(Recess to 11.30 A. M.)

(At 11.30 A. M. the clerk called the roll of defendants and all were present.)

The Clerk: Joseph Duffy.

The Court: Come up here.

(Conference at the bench between the Court and defendant Duffy.)

The Court: Well, we can't have that happen here. I cautioned the defendants several times that if this case was to be delayed every day by somebody's absence we wouldn't get through until Christmas. Now under the circumstances I am going to have the marshal take you
1793 into custody during the noon recess. He will take charge of you. In the afternoon at the mid-afternoon recess he will take charge of you, and he will take charge of you at the end of the day.

Did any of the defendants leave during this recess?

Mr. Cahill: Yes, your Honor, but they are back.

The Court: They are back?

Mr. Cahill: Yes.

The Court: All right, bring in the jury.

(The jury entered the court room.)

FRANCIS DAVID DILLMAN, resumed the stand.

Cross-examination by Mr. Maguire.

1794

Q. Mr. Dillman, you have told us of an incident that you said took place around December, 1936. You said that you met Weinheimer for the first time at a service station, gasoline station in Jersey City, is that correct? A. That is right.

Q. Now can you tell us about what time of the day it was that you saw Weinheimer at this service station in Jersey City? A. During the morning some time.

Q. Ten or eleven o'clock? A. Why, I couldn't state definitely what time it was.

Q. It was before noontime? A. Yes, sir.

Q. Now, you left the service station in Jersey City and then drove to some place in Brooklyn? A. That is right.

Q. Do you recall the name of the concern whose place you went to? A. No, I cannot.

Q. What was your load? A. It was a load of stove parts for furnaces.

Q. Do you recall the street that that place was located on? A. No, I do not.

Q. And you have no recollection of the concern that you went to? A. No, I have not. 1796

Q. Now, what time was it, do you recall, when you arrived at this place of business in Brooklyn? A. No, I couldn't state the time.

Q. Was it the afternoon? A. No, it was in the morning. Before noon.

Q. How many tons did you have on the truck? A. How many tons?

Q. Yes. A. Approximately twelve.

Q. And the entire load was to be delivered to this particular concern? A. That is right.

Q. Now, were you backed up to a platform or did you have to unload at the sidewalk? A. I was backed up to a platform.

Q. And what was the operation you were required to undertake to complete the unloading? Take the stuff as it was piled on your truck and put it on the platform? A. No, sir. We wheel it right in the building. 1797

The Court: Pardon me. Were these parts in cases or in loose lots?

The Witness: Cases.

The Court: Cases?

The Witness: Yes, sir.

1798 *Francis D. Dillman—For Government—Cross.*

Q. Can you tell us approximately how many cases there were in that load? A. No, I couldn't.

Q. But it was approximately twelve tons? A. That is right.

Q. Do you recall approximately the weight of these cases? A. Oh, they run different weights. Some wasn't so heavy and some of them was.

Q. Would you say that there were several hundred of these cases on your truck? A. Oh, I couldn't say as to that.

Q. Was it fifty? As few as that? A. I couldn't say as to that.

1799 Q. So you can't tell us whether it was 50 or 300 cases? A. No, sir, because they varied; some of them were small and some of them were real large.

Q. But in any event, as you backed up to the platform, you took these cases off, put them on the platform, and then trucked them into the warehouse itself: is that correct? A. No, sir.

Q. What did you do, please? A. We trucked them right off of the truck right into the warehouse.

Q. I see.

The Court: Were there any of these cases that you were not able to handle alone?

The Witness: Yes, sir.

1800 *By the Court.*

Q. Did you have assistance? A. They had men right there at the warehouse.

By Mr. Maguire.

Q. Now, keeping in mind the fact that you did have to take these cases into the warehouse, and some of them

were very bulky, and that it was about twelve tons of cases, will you tell us now your best recollection of the time that it took you to unload? A. Approximately an hour.

Q. Now, thereafter, I understand you went to Piel's Brewery; is that right? A. Yes.

Q. Is that located in Brooklyn, too? A. Yes.

Q. About how far away from the place where you had unloaded was the brewery? A. That is hard to say.

Q. Well, how long did it take you to drive there? A. Approximately twenty minutes.

Q. When you got to the brewery did you have to wait for your load? A. Yes, sir. 1802

Q. How long did you have to wait there? A. Oh, approximately an hour and a half.

Q. And then you were able to back in; is that it? A. That is right.

Q. And did you yourself load the truck at the brewery? A. No, sir.

Q. I assume that it was barrels of beer that was put on the truck, is that it? A. No, sir.

Q. What was it? A. It was cases.

Q. Well, did you assist in the loading of the cases of beer? A. I helped to load them.

Q. And approximately how many cases of beer were put on the truck? A. Approximately 700.

Q. And can you give us an idea of the tonnage of that? A. Yes, sir; about 700 cases of beer will average about eleven and one-half ton to twelve. 1803

Q. And how long did it take to load these approximate 700 cases of beer? A. It all depends on how fast they come.

Q. How long that time? A. That is hard to say.

Q. Do you recall approximately? A. I would say approximately two hours.

Q. Well, you left the brewery then, and, as I recall it, you said you drove directly over Manhattan Bridge; is that right? A. That is right.

Q. And then you started off to Buffalo? A. That is right.

Q. Now, in going, I assume you went up to Albany. Which road did you use, the east side of the Hudson or the west side? A. I think it would be the west side.

Q. Did you always use the west road? A. No, I did not.

Q. You frequently used the road on the east of the Hudson? A. We used both.

1805 Q. Now, do you recall what time it was that you left Albany on that trip? A. No, I don't recall what time it was, but some time during the night.

Q. And what time did you get to Buffalo? A. The following evening.

Q. Approximately at what time? A. That was during the night.

Q. 8, 9, 10 o'clock at night, or later or earlier? A. It was later than that.

Q. Twelve or one? A. Late; around in there some place.

Q. And where did you take your truck when you arrived in Buffalo? Did you make the delivery of the beer? A. No, sir, I went to the terminal.

Q. I see. And then you left the truck? A. I padlocked it and went home.

1806 Q. Now, you were in Jersey City at the service station some time in the morning. Now, what time had you left Buffalo? A. Oh, I had left Buffalo a day or so before.

Q. A day or so? A. Yes.

Q. Well, can't you tell us whether it was the day before or two days before? A. It was during the night of the day before, approximately.

Q. Now, do you recall the day of the week that you were in New York making this delivery in Brooklyn and

making the pick-up of the beer? A. No, I could not say as to the day.

Q. Now, will you assume for the moment then that the day you were in New York was a Wednesday, and if that was a Wednesday, you reached Buffalo the following Thursday night; is that right? A. That is right.

Q. Now, assuming again that the day you were in New York was a Wednesday, what day was it that you left Buffalo? A. Monday.

Q. Monday night? A. Well, Monday afternoon, Monday night; it doesn't make much difference.

Q. Where did you pick up your truck in Buffalo when you started off that Monday afternoon or Monday night? 1808
A. At the terminal.

Q. Did you then take it out and get this load of stove parts? A. I did not.

Q. Was it loaded when you took it over? A. Yes, sir.

Q. So that on this one trip you left Buffalo, we will say, on Monday night or Monday afternoon and returned Thursday night; is that right? A. Thursday or Friday—

The Court: That is assumptively. He does not say he left there on Monday, but that is predicated, I take it, upon the assumption that you asked him to make that he got here on a Wednesday.

Mr. Maguire: Yes.

Q. You assumed that, did you not, as far as the particular days are concerned? 1809
A. Well, that is approximately about the time.

Q. Now, how many ton truck was this that you were operating? A. Generally a fifteen-ton.

Q. A tractor and trailer? A. That is right.

Q. How far is it from New York to Buffalo? A. New York to Buffalo by the way of Albany is right around 438 mile to 450 mile.

Q. Have you ever driven a truck—by that I mean, I think it is called in the trucking business, a straight job, a truck—from Buffalo to New York? A. No, sir.

Q. You have only driven a tractor and trailer? A. That is right.

Q. Now, what is the best time that you ever made on that over-the-road trip from Buffalo to New York? The best time you ever made. A. To tell the truth, I never come straight through.

Q. Well, what is the best driving time that you ever made from Buffalo to New York?

1811 Mr. Cahill: Well, may we have it fixed, your Honor, whether this is the over-all time, or whether this is the time actually consumed in driving?

Mr. Maguire: In driving.

The Court: You mean the driving time?

Mr. Maguire: The driving time.

A. Approximately eighteen hours.

Q. And what is the average time that you have spent driving over the road with a tractor and trailer from Buffalo to New York? A. What is the average?

Q. You see, before I asked you what is the best time you have ever made, and your answer was eighteen hours. A. That is right.

Q. Now, what is your average time? A. Oh, eighteen,
1812 nineteen, twenty hours.

Q. And I suppose the elements, rain and snow, will have an effect? A. That is right.

Q. And the weight of the load has an effect on your speed, too? A. That is right.

Q. Now, on this particular occasion did you come down from Albany on the road on the east of the river or on the west of the river? A. That would be 9W, that would be the west side.

Q. And the entire load that you brought from Buffalo was delivered at the place of business at the furnace company in Brooklyn? A. That is right.

Q. And the entire load that you took from New York City was delivered in Buffalo, New York? A. That is right.

Q. You have told us, Mr. Dillman, that your best recollection was that you first met Weinheimer in December of 1936. Would you tell us when you started to work for Perry's Express? A. It was the last month of December, 1936. It would be December, 1936.

Q. Now, in fixing December, 1936, as the time when you met Weinheimer, did you check against any manifests 1814
or bills of lading to refresh your recollection as to the date? A. No, I did not.

Q. And it is just your general recollection now as you look back that this was around the end of 1936? A. That is right.

Q. You have not checked up against any particular incident or document? A. No, sir.

Q. I show you a paper——

Mr. Maguire: May I have it marked first?

The Court: Mark it Defendants' Exhibit B for Identification.

(Marked Defendants' Exhibit B for Identification.) 1815

Q. I show you a paper, Defendants' Exhibit B for Identification, and ask you if you have seen that before? A. I have seen several telegrams like that.

Q. Have you seen that telegram before? A. I could not say that I have seen it.

Q. Will you look at the date on it? A. Yes, sir.

Q. Over what period of time did you drive to New York from Buffalo and when you saw the defendant Weinheimer? A. I don't quite understand.

Q. For how long a period was it that you saw Weinheimer as you drove through New York? When you drove through New York? You say you saw him first around December, 1936. For how long thereafter did you see the defendant Weinheimer? A. I seen him quite frequently after that.

Q. For how long a time? A. I couldn't say as to that.

Q. Well, these other trips you say you made from Buffalo to New York: Was it always a case of your pick-
1817 ing up merchandise at Buffalo and delivering that merchandise to some consignee in the City of New York? Is that what you always did? A. We never picked it up, no, sir.

Q. In other words, you drove a loaded truck from Buffalo? That is where you got on the truck? At Buffalo? A. Yes.

Q. And the load was on the truck when you got on? A. That is right.

Q. Then you always drove to some consignee in New York City? A. Not always, no, sir.

Q. Well, on the occasions that you met Weinheimer was the consignee of the merchandise on your truck always someone in the City of New York? A. No, sir.

Q. Now, do you remember a man working for Perry
1818 by the name of Jehli? A. Yes, sir.

Q. Do you recall approximately when it was that Jehli worked for Perry? A. No, I could not.

Q. Now, at any time when you met Weinheimer in the City did he arrange for or secure for you a return load? A. No, sir, he did not.

Q. On this trip which you have mentioned which you say took place in December, 1936, did you have a helper? A. No, sir.

Q On the trips that you had thereafter in 1937 did you have a helper? A. I had a helper sometimes, yes, sir.

Q. How often did you have a helper? A. That is pretty hard to say.

Q Well, did you have a helper 10 per cent. of the time or 20 per cent. of the time? What percentage? A. I wouldn't state as to that because it is hard saying just when I did have a helper.

Q Well, did you have a helper half of the time that you came to New York? A. No, I couldn't say if I did.

Q. It certainly was less than 50 per cent. of the time that you had a helper? A. Pardon me. Are you referring to a helper coming from Buffalo or down here? 1820

Q Yes, riding the truck with you. A. Well, it wasn't half the time.

Q. So, more than the majority of times you drove yourself without a helper? A. That is right.

Mr. Maguire: That is all.

The Court: Any further questions?

Cross-examination by Mr. Boudin.

Q. Mr. Dillman, all of the occasions that you met Weinheimer so that he helped you unload or you paid him any money were in New York City? I mean you were delivering in New York City; is that correct? A. I don't quite understand that. 1821

The Court: The stenographer will repeat the question.

Q. (Read.) A. No, sir.

Mr. Cahill: I object to the form, your Honor. It is not clear.

The Court: Well, the witness must have understood it. He answered "No, sir."

Q. Well, did Weinheimer ever help you unload elsewhere than in New York City? A. Weinheimer never helped me unload.

Q. You testified you had given him some money in December, 1936? A. That is right.

Q. Well, he met your truck somewhere then in New York City? A. No, sir.

Q. Where did he meet your truck? A. Jersey City gas station.

1823

Q. And did he get on the truck there? A. No, sir.

Q. Well, he merely had a conversation with you? A. Yes, sir, he had a conversation with me then.

Q. But you testified that he also met your truck or got on your truck somewhere after the conversation? A. In Brooklyn.

Q. Brooklyn is in New York City. When I said New York City I included Brooklyn. I mean the City of New York which includes five boroughs. Now I ask you the question——

The Court: There are people in Buffalo and also in Brooklyn who still regard Brooklyn as independent of New York City and that is particularly true at Ebbets Park.

1824

Q. Bearing in mind that Brooklyn is part of New York and that New York City has five boroughs, I ask you the question: Is it not a fact that on each occasion when you and Weinheimer had some transaction with respect to a delivery or unloading of a truck either by way of his helping you or by way of your giving him money, the deliveries were all made in New York City?

Mr. Cahill: I object to the form. Several questions in one.

The Court: Well, there are, but I will see whether the witness can answer it. It is cross-examination. The rule is different. Do you understand the question?

The Witness: No, I do not. I didn't get——

The Court: The stenographer will repeat it. If you understand it, answer it; if you don't understand it, say so.

(Question read.)

Mr. Cahill: I press the further objection on the ground that it assumes a state of facts not proved 1826
in evidence.

The Court: You don't have to assume a state of facts in cross-examination.

Mr. Cahill: No, but I submit, your Honor, where you ask a question in the alternative, that the question is defective as duplicitous.

The Court: Overruled. I will see if the witness understood the question.

The Witness: These loads and transactions were done in New York City.

Q. In other words, Mr. Weinheimer never asked you for any money for unloading anything in New Jersey or elsewhere outside of New York City? A. Yes, he did.

Q. When was that? A. I couldn't tell you approxi- 1827
mately the date.

Q. Well, where did you unload on that particular occasion when you say he did? A. North Bergen, New Jersey.

Q. Where did you unload on that occasion? A. National Battery.

Q. Where did you meet Weinheimer on that occasion? A. Minute Men's Service Station.

Q. What did he do and what did you do on that occasion? A. What did he do?

Q. Yes. A. He followed me down to North Bergen.

Q. Now, can you place a time for that occasion? A. I couldn't exactly, no.

Q. Well, was it before the occasion that you have already testified to as having happened in December, 1936, or after that? A. I should say it was some time approximately in 1937.

Q Now, was it before you sent him these telegrams that was shown you or after that?

Mr. Cahill: I object to that, your Honor.

The Court: Sustained.

Mr. Boudin: Exception.

1829

The Court: The telegrams are not in evidence.

Mr. Boudin: The dates. He has looked at them. We are only asking him to place the time.

The Court: The jury and I don't know what is in the telegram. You can't interrogate the witness with respect to the contents of telegrams not in evidence.

Mr. Cahill: May I step up and show this to the Court (handing papers to Court)? Then will your Honor have the question read?

The Court: Have you looked at the date of the telegram?

Mr. Boudin: I have not.

The Court: Well, I suggest that you look at the

1830

date of the telegram and look at the date when the indictment was filed.

Mr. Cahill: May I have the question read, your Honor?

The Court: Just a moment. Let Mr. Boudin look at the date of the telegram and if he wishes he may look at the date when the indictment was filed.

Mr. Boudin: If your Honor please, I know the date of the indictment.

The Court: Well, look at the date of the telegram.

Mr. Boudin: Well, that is the reason for my asking that, if your Honor please. I have looked at the date of the telegram.

The Court: All right. I sustain the objection.

Mr. Boudin: Exception.

Mr. Cahill: If your Honor please, I would like to have that question read because there is another defect in it. Your Honor knows the name of the addressee of the telegram. 1832

The Court: Yes.

Mr. Cahill: May I have the question read?

The Court: I know the name but I can't tell the jury what name is on it because no one has offered it.

Mr. Cahill: I ask that counsel be admonished—

The Court: Well, read the question.

(Question read.)

The Court: Objection sustained.

Mr. Boudin: Exception. If your Honor please, we now move to strike out the testimony of this witness on the ground that it has no relation to any crime charged in either of the indictments.

The Court: Denied. 1833

Mr. Boudin: Exception.

The Court: Any redirect?

Mr. Marks: Yes.

Redirect examination by Mr. Marks.

Q. On the occasion when you unloaded your truck in North Bergen, when did you first see Weinheimer?

Mr. Boudin: I object to that on the ground that I was not permitted to go into that; not proper redirect.

The Court: Overruled.

Mr. Boudin: Exception.

A. What was that question?

Q. (Read.) A. The Minute Men's Service Station before I went to National Battery.

Q. That is in Jersey City? A. That is right.

Q. Can you tell us where North Bergen is with respect to Jersey City? A. The directions? I am not well acquainted with the directions down here.

1835

Q. About how far? A. Oh, approximately eight miles. Some place in there.

Q. What was the conversation you had with Weinheimer on that occasion?

Mr. Boudin: I object to that.

The Court: Sustained.

A. Do you want to know——

The Court: No. Strike it out.

Q. Did you see Weinheimer in North Bergen? A. Yes, sir.

1836

Q. How long after you saw him in Jersey City? A. Approximately ten minutes. He followed me right down there.

Q. Did you have a conversation with him in North Bergen? A. No, I couldn't say I had at that time.

Q. Did you have any transaction with him in North Bergen? A. Yes.

Q. Will you describe that transaction?

Mr. Boudin: Objected to.
The Court: Sustained.

Q. Who unloaded your truck? A. I did.

Mr. Boudin: Objected to.
The Court: Allowed.
Mr. Boudin: Exception.

Q. Did Weinheimer do anything on your truck? A. No, sir.

Q. Did you give Weinheimer anything?

Mr. Boudin: Objected to. 1838
The Court: Sustained.

Q. Did Weinheimer ask for anything?

Mr. Boudin: Objected to.
The Court: Sustained.

Q. Now, Mr. Dillman, do you remember when you first became employed by Perry? A. The latter part of the year 1936.

Q. What month? A. December.

Q. Do you remember when you made your first trip to New York City? A. Right shortly afterwards.

Q. In the same month? A. That is right.

Q. And with respect to the first trip how long after that 1839 did you see Weinheimer for the first time? A. After the first trip?

The Court: Did you see Weinheimer on the first trip that you had made down here for Perry?
The Witness: Yes, sir.
The Court: Now the question is how long after that was it before you saw him again.

The Witness: Approximately the first part of 1937.

Q. Had you made any trips in between those two? A. That I couldn't say whether I did.

Q. Now let us go back to the assumed trip, which Mr. Maguire took you over on cross-examination, leaving Buffalo on Monday afternoon, is that right? A. Approximately Monday afternoon.

Q. About what time?

The Court: Well, Mr. Maguire didn't take him on an assumed trip. Mr. Maguire had him assume a
1841 certain date as a possible date for the purpose of fixing dates prior thereto and subsequent thereto on a trip not assumed.

Mr. Marks: Well, the date was assumed. I have the same purpose now.

The Court: All right.

Q. About what time on Monday afternoon did you leave? A. Oh, I couldn't state definitely.

The Court: Well, haven't we been all over this?

Mr. Marks: Well, there are some matters I would like to bring out that were not brought out, your Honor.

The Court: All right.
1842

The Witness: I couldn't state approximately the time I did leave but it wasn't in the forenoon; what I mean by that, the latter part of the afternoon.

Q. Before you reached Jersey City did you have any time out to sleep? A. Yes, sir.

Q. Where? A. Albany, New York.

Q. How long did you sleep there? A. Approximately eight to ten hours.

Q. On the way back did you stop to sleep? A. The same place, yes.

Q. For how long? A. The same amount of hours.

Mr. Marks: That is all.

The Court: Any recross?

(No response.)

The Court: Next witness.

WILMER FIDLER, residing at East Berlin, Pennsylvania, called as a witness on behalf of the Government, being duly 1844
sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Fidler, will you keep your voice up now so we can all hear everything you say? A. Yes.

Q. Where are you employed? A. H. Earl Pitzer, Biglerville, Pennsylvania.

Q. As an over-the-road driver? A. Yes.

Mr. Murray: May I have the last answer repeated?

The Court: Yes.

(Answer read.)

1845

Q. How long have you been employed by Pitzer? A. Since early fall, 1936.

Q. Now, when you were first employed by Pitzer did you unload your truck in New York City? A. I did.

Q. Did there come a time when you no longer unloaded your truck in New York City? A. Yes, sir.

Q. Do you remember when that first occasion was? A. Late fall of 1936.

Q. Where? A. On Greenwich Street and Washington, New York City.

Q. Do you remember what consignee? A. The Economy Restaurant Supply Company.

Q. Now, what happened there?

Mr. Murray: I object to that; if your Honor please.

The Court: Sustained.

Q. Did you see anybody?

Mr. Murray: I object to that, if your Honor
1847 please.

The Court: Sustained.

Q. Can you tell us about what month that was? A. November.

Q. Did you see anybody there?

Mr. Murray: I object.

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Marks: If the objection, your Honor, is on the ground that it is prior to the beginning of the conspiracy as charged in the indictment, may I be heard on that.

The Court: That is the ground upon which I
1848 sustained the objection.

Mr. Marks: That is what I assumed. May we not show any prior acts, your Honor—

The Court: No.

Q. Do you know whether or not you were stopped in the month of December, 1936?

Mr. Maguire: I object to the form of the question.

The Court: Sustained.

Q. After that first occasion when were you stopped?

Mr. Maguire: The same objection.
The Court: Sustained.

Q. After that first occasion when was the first time that you did not unload your own truck in New York City? A. About three weeks.

Q. Now, can you tell us what month that was? A. About February, 1937.

Q. Well, you told us the first one was in November, 1936. A. Yes; and it would be 1936.

The Court: February what? 1850

Q. When was the first time? A. The first time was in November in 1936.

The Court: And how long after that was it?
The Witness: Three weeks.

Q. About what month now? A. It would be the last part of December.

Q. 1936? A. That is right.

Q. Where? A. On Greenwich Street again.

Q. Can you remember the name of the consignee? A. Max Ams.

Q. Did you see anybody there? A. I did.

Q. Whom did you see? A. The same two guys there that I seen the first time, and a half a dozen other guys. 1851

Q. Now, what was said?

Mr. Boudin: Objected to.
The Court: Sustained.

Q. Did you see anything on these men?

Mr. Maguire: Objected to.

A. Yes, I seen an 807 button on their caps.

The Court: Overruled.
Mr. Maguire: Exception.

Q. Now, what was said in this conversation?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Will you stand up and look around the courtroom,
1853 Mr. Fidler, and tell us if there is anybody there whom you know? A. (Standing) Yes, there is.

Q. Will you point him out? A. Right there in the front row (indicating).

By the Court.

Q. Do you know the man by name? A. I do.

Q. What is his name? A. George Needelmann.

Q. Did you see him in December, 1937?

Mr. Marks: 1936, your Honor.

Q. (Continued) 1936. A. No, I did not.

Q. Is this one of the men you saw at Max Ams? A. No.
1854 he was not.

Q. Do you know who either of those men were that you saw at Max Ams? A. I do not.

Q. Have you ever seen either one of them since? A. I have seen them since, but I don't know their names.

Q. Have you seen either one of them at any time subsequently in the company of George Needelmann? A. I have.

Mr. Marks: Does your Honor wish to have the identification made more precise, or may the record now show the identification?

The Court: Identification of Needelmann?

Mr. Marks: Yes, sir.

The Court: Well, he has pointed out a man here and said that is George Needelmann.

Mr. Marks: May the record indicate that that was the defendant George Needelmann?

The Court: The clerk may call the name George Needelmann.

The Clerk: George Needelmann.

(A man stood up.) 1856

The Court: Is the man that has now arisen the man whom you say you know as George Needelmann?

The Witness: That is.

By Mr. Marks.

Q. Now, did you have a conversation with this man, or rather with these men, at Max Ams around December, 1936? A. I did.

Q. About how many were there altogether? A. About eight.

Q. Will you tell us the conversation?

Mr. Maguire: Objected to. 1857

The Court: Sustained.

Mr. Maguire: Exception.

The Court: Do I understand now that he had a conversation with two people or that the conversation was with some or all of the eight persons who were there?

Mr. Marks: May I pursue that?

The Court: Somebody will have to pursue it.

Q. Did all eight people come up at the same time? A. They did not.

Q. Do you remember with whom you had the conversation? A. I don't know his name.

Q. Well, do you remember the individual? A. I remember seeing him since, yes.

Q. Do you remember the persons whom you later saw in the company of George Needelmann? A. I remember seeing him since, yes.

Q. Do you remember who they were? A. I don't know their names.

Q. Was it either of those persons with whom you had the conversation? A. Yes, it was.

1859 Q. Will you tell us now what the conversation was?

Mr. Maguire: Objected to.

Mr. Boudin: Objected to.

The Court: I will allow it.

Mr. Maguire: Exception.

A. They pull up and asked me if I had a City man on, and I said no. They asked me if I was going to put one on. I said no. They said they would see the receiving clerk and I would have to put one on. Now, I asked him why I would have to have a man; I never heard of a law like that, and I wasn't putting a man on if I didn't have to.

So they talked to the receiving clerk, and I talked to
1860 him, and he come out and he would not take the goods. He said I would have to put the man on; that was the rule there, and he didn't want no trouble at the place; so we hired a man.

Q. Who said that last? A. The receiving clerk said I would have to hire a man because he didn't want no trouble around there.

Mr. Boudin: I move to strike it out, if your Honor please.

The Court: Strike out what the receiving clerk said.

Q. Was anyone present when he said that? A. The man that I later on hired was present.

Q. Anyone else? A. The guy that was with him.

Q. They were all together? A. The two of them was together; the rest was back a bit.

Mr. Marks: May we now have that conversation stand?

The Court: No.

By the Court. 1862

Q. You had a talk with the receiving clerk, is that right? A. Yes.

Q. After you had a talk with the receiving clerk did anybody get on your truck? A. After he told me I had to hire the——

Q. I didn't ask you that.

The Court: Strike it out.

Q. You had a talk with two men whom you subsequently saw in the presence of Needelmann? A. That is right.

Q. Then you had a talk with the receiving clerk? A. That is right.

Q. Now, after you had a talk with the receiving clerk 1863 did anybody get on your truck and do anything? Just answer that yes or no. A. They got—they unloaded the truck.

Q. Just answer that yes or no. Did anybody get on your truck? A. Yes.

Q. Did they do anything? A. They unloaded the load.

By Mr. Marks.

Q. Did you have any further conversation with either of those men? A. I told them the second time, the next time I was going to bring a load in and unload it myself.

They said, "If you know what's good for you you won't do it." They said—he said—the guy I talked to, he said that. He said, "A half a dozen of us will get you and beat you up, or," he said, "we'll run the truck in the river."

Q. Did he say both or either one? A. He said both.

Q. Can you remember any more of that conversation?

1865 A. He said, "After this when you come in, pick up a man before you go around to the consignee."

Q. Now, did you give anybody anything? A. I paid him $9.42.

By the Court.

Q. How many persons did you pay that to? A. For one load?

Q. For that load. A. One person.

Q. The total amount was $9.42? A. That is right.

Q. How many men were there on the truck unloading? A. One man.

By Mr. Marks.

1866 Q. How long did it take to unload? A. It took him 4 hours, which would have taken us one hour——

Mr. Maguire: I move that that be stricken out.

The Court: Strike out after "4 hours."

Q. Did you see any of those men after that? A. I seen him at different times.

The Court: Now, "those men,"—are you referring to those two men or are you referring to the aggregation—I think he specified there were eight or more; I can't tell.

Mr. Marks: No, of the men in that group.

The Witness: I did. I seen them all at different times.

Q. How often did you drive your truck into New York City on an average? A. On an average of twice a week.

Q. Now, about how often did you see any of the men who were in that group at Max Ams after this occasion that you have just described to us? A. About eight different times. 1868

Q. Do you remember how long after this occasion at Max Ams you next saw them? A. About four weeks.

Q. Where? A. That I can't tell.

Q. Did you have a conversation with them? A. No, I didn't.

Q. Did you ever see them again at any consignee? A. Yes, I did.

Q. Did you always see them first before the load began to be unloaded? A. No, I didn't.

Q. Now, was there any occasion when you saw them after the load began to be unloaded? A. Yes, I saw them after the load was unloaded; I was ready to leave; they came and asked me if I had a City man on, and I said no—

1869

Mr. Maguire: I move that that be stricken out.

Mr. Marks: Just a moment.

The Court: Just a moment. Let me hear the question.

(Question read.)

The Court: Objection sustained. Strike out the answer.

Q. Do you remember an occasion when you unloaded your own load after December, 1936?

Mr. Maguire: Objected to.

The Court: What is the question?

(Question read.)

The Court: He may answer yes or no.

A. Yes.

Q. Did you see any of those men on that occasion? A. I did. They come up to the truck—

Q. No, just a second——

1871 The Court: No. You have already answered it.

Q. Do you remember where that was? A. I do not.

Q. Can you tell us whether or not it was at some consignee? A. It was.

Q. Now, had you started to do anything? A. I was already unloaded, and they come up and asked me if I had—

The Court: No. Strike out after "unloaded."

Q. How many of them did you see that time?

Mr. Maguire: Your Honor, might we have the time fixed?

1872 A. Two.

The Court: I will sustain the objection.

Q. Do you remember when that was? A. In the spring of 1937.

Q. Can you fix the month? A. I cannot.

Q. Now, how many did you see on that occasion? A. Two.

Q. Did you have a conversation with them? A. Yes, I did.

Q. What was the conversation?

Mr. Boudin: Objected to.
The Court: Sustained.

By the Court.

Q. Were either of these men the men you had seen on the occasion you have referred to in December of 1936? A. They were.

By Mr. Marks. 1874

Q. What was the conversation? A. They asked me if I hired a City man to unload that load, and I said no, I was already unloaded——

Q. Just a moment. Tell us the conversation again, slowly. A. They asked me if I had hired a City man to unload the load, and I said no, I already had the load off. They said, "Don't you know you are supposed to hire a City man?" and I said, "Not when I can do it myself." They said, "You will just have to hire a City man." And I said, "I do not." And the truck was unloaded, and I got in the truck and left. And he said, "If you know what's good for you, you will never come back in the City again." And I went on.

Q. Do you remember when you first saw George Needel- 1875
mann? A. In the summer of 1937.

Q. Where? A. I can't recall.

Q. Can you tell us whether or not it was at a consignee? A. It was.

Q. Was anyone with him when you first saw him? A. Yes.

Q. Do you know who? A. Yes.

Q. What is the name of the person who was with him? A. Tony Venditti.

Q. Now, will you stand up and tell us if you see him in court? A. (Standing) Yes.

Q. Will you point him out? A. In the second row at this end (indicating).

Q. Second row which end? A. Right over here (indicating).

Q. Are you looking at your right or your left? A. My right.

Q. Now, what seat from your right in the second row? A. Third.

1877

Mr. Marks: May the clerk call the name of Tony Venditti?

The Court: Yes.

The Clerk: Tony Venditti.

(A man stood up.)

Q. Is that the man? A. That is right.

The Court: Well, is the person who has arisen the person you identify?

The Witness: He is.

Q. Now, was anyone else with Needelmann that first time that you saw him? A. There was another man with

1878 him but I don't know his name.

Q. Do you see him in court? A. I would not know him if I did see him.

Q. Did you have a conversation there with those three men? A. We did.

Q. What was said? A. They asked us if we had a City man on, and I said no. They asked us if we are going to hire one. I said no. He said we would have to hire one. He said that the shipping clerk would not receive it unless we did. I said, "How do you know?" He said,

"We'll see." The shipping clerk would not receive it unless we hired a man, so we hired him and we helped him to unload it.

Q. Do you remember any further part of that conversation? A. Well, while we were at that place unloading there was another driver came in there and they had a fight about unloading.

Q. Who had a fight? A. Georgie Needelmann and this other driver.

Mr. Murray: I move to strike that out, if your Honor please.

The Court: Strike it out. 1880

Q. While you were unloading did you see another truck? A. Yes, I seen different trucks.

Q. On this same occasion that you have been talking about did you see another truck while you were unloading?

The Court: He said he saw different trucks.

Q. Now, did you see Needelmann have a conversation with the driver of any of those trucks? A. Yes, he had a conversation with the driver that came there. They had a fight together.

The Court: Strike out "they had a fight together." 1881

Q. Just answer the question that I ask you, Mr. Fidler. Do you know what truck that driver was on? A. I do not.

Q. Did you see any name on the truck? A. No.

Q. Was it one of Pitzer's trucks? A. No.

Q. Are you sure of that? A. I am sure.

Q. Now, what did you see Needelmann do?

1882

Mr. Murray: I object.

Mr. Boudin: Objected to.

A. I seen him hit this guy——

Q. Just a second.

The Court: One moment. I will sustain the objection.

Mr. Marks: May I be apprised of the ground, your Honor, so that I might correct the question?

The Court: Well, there is not sufficient identification of the truck.

Mr. Marks: Of the other truck?

1883

The Court: Yes.

Mr. Marks: Well, I submit that that is not necessary, your Honor.

The Court: Well, it is not what you submit; it is what I rule.

Mr. Marks: Well, may I be heard in argument on the ruling?

The Court: No, sir. You may go ahead and prove your case.

Mr. Marks: That is what I am trying to do, your Honor.

Q. Do you know where the other truck came from?

1884

Mr. Boudin: Objected to as calling for a conclusion.

The Court: Sustained.

Q. Did you see any license plates on the second truck?

Mr. Boudin: Objected to.

The Court: Allowed.

A. No.

By the Court.

Q. Did you know the driver of that truck? A. I did not.

By Mr. Marks.

Q. Did you hear Needelmann say anything about that truck?

Mr. Boudin: Objected to.

The Court: That will be allowed. Declaration against interest.

1886

A. I heard him say——

Mr. Boudin: One moment. The answer is yes or no.

The Court: Yes or no.

A. Yes.

Q. What did you hear him say about that truck?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. I heard him say that that driver had to put a man on to help him, and that is what the argument was about; 1887 that is what they fought about.

The Court: Strike out "that is what they fought about".

Q. What did you see Needelmann do after you heard him say that?

Mr. Boudin: Objected to.
The Court: Allowed.
Mr. Boudin: Exception.

A. I seen him hit the guy and then kick him.

Mr. Boudin: I move to strike it out.
The Court: Denied.
Mr. Boudin: Exception.

Q. Now, do you remember when you next saw Needelmann after this occasion? A. Well, it was several weeks afterwards I saw him again.

1889 Q. Do you remember where? A. I do not.
Q. Who was with him? A. Tony.
Q. Anyone else? A. No.
Q. Now, did you have a conversation with Needelmann and Tony this second time? A. I did.
Q. What was the conversation?

Mr. Murray: Your Honor, I object, because there is no time or place fixed here, and how we can possibly meet a situation where there are continuously questions asked when we don't know what year, what month, what date, or what place—

The Court: I do not think there is any doubt about the fact that it is in the year 1937. He says

1890 it was several weeks later. But I will ask him now to fix as definitely as he may be able to do the precise time when it was.

Mr. Boudin: Also the place, if your Honor please.

The Court: Now just a moment.

The Witness: The time was the summer of 1937. I don't know the month.

By the Court.

Q. Now, where did it take place? A. I don't know that.

Q. Well, what city was it in? A. New York City.

Q. And in what borough, what part of New York City? A. It was along the west side of New York City, Judge.

Q. You mean along the Hudson River? A. That is right.

Q. Is that the part of New York you refer to? A. That is right.

Q. Do you know where the island of Manhattan is? A. (No answer.)

Q. Do you know what part of New York Manhattan is? 1892
A. No.

The Court: All right.

By Mr. Marks.

Q. Did you have a conversation with Needelmann and Venditti on that occasion?

Mr. Murray: Now, if your Honor please——

A. I did——

The Court: One moment.

Mr. Murray: I object on the ground that the time and place is too vague and indefinite, and in such a situation it is impossible for the defendants to meet the issue unless it is made more definite and specific. 1893

The Court: Objection overruled.

Mr. Murray: Exception.

A. I did.

Q. What was the conversation? A. He asked me if I was going to hire a City man again. I said no. He said we would have to hire him; the house would not receive it; so we hired him again.

Q. Do you remember whether there was any further part in that conversation? A. No.

Q. Can you tell us, Mr. Fidler, how often you have seen Needelmann between the time that you first saw him and May 31, 1938? A. Quite a few times. I don't know the number.

Q. Well, can you tell us the number of times with respect to the number of trips you made into New York
1895 City during that period? A. Almost every trip.

Q. And how often did you see Tony during the same period? A. Just about as often as I seen Needelmann.

Q. Did you have a conversation with him each time? A. Yes, I did.

Q. Now, can you recollect any specific conversation you had with him during that period?

The Court: Yes or no.

A. Yes.

Q. When? A. It was in the fall of 1937.

Q. And do you remember where? A. It was up right off of West Street.

1896 *By the Court.*

Q. Well, where were you making delivery at that time? A. I don't know the consignee's name any more.

By Mr. Marks.

Q. What was the conversation?

Mr. Murray: I object if your Honor please.

The Court: Overruled.

Mr. Murray: Exception.

A. We had a load of apples going up West Street, and we met Tony and Georgie; they came out and jumped into the truck as we were moving along—we had to slow up for traffic—red apples——

Q. Excuse me. Were they fresh apples or canned apples? A. Fresh apples.

By the Court.

Q. Were they loose or in containers? A. They were in barrels. 1898

Q. Were the barrels capped? A. Yes, sir. Well, we never had no trouble with fresh fruits, never had to hire nobody for that——

Mr. Murray: I move to strike out the observation.

The Court: Strike it out. The jury will disregard it.

A. (Continued) So they rode along with us up to the place; didn't say anything about unloading or anything; they helped us to unload, takes us about a half hour. After we got unloaded they said, "Now, who is the banker to-day?" I said, "What do you mean?" They said, "Who is going to pay us to-day?" I said, "I am not. We never paid for fresh fruit," and I said, "I don't have the money." My helper happened to have a couple of dollars. He says, "I got a couple of dollars." They said, "We will take that; that is better than not getting anything at all." So I paid him the $4 my helper gave me and got a receipt for it. 1899

By Mr. Marks.

Q. Now, do you remember any other specific conversations during the same period? A. Yes, one day I had—

Q. Just a second. Can you tell us when, approximately when? A. It was in the fall of 1937.

Q. Do you happen to remember the month? A. I don't.

Q. Can you tell us where?

The Court: Was it before or after this occasion when you were making the delivery of the apples?

The Witness: It was right after that.

1901 Q. Do you remember where? A. Coming down Hudson Street.

Q. Now, who was present at that time? A. Tony.

Q. Anyone else? A. No. Just Tony and I on the truck and the helper.

Q. Was George there or not? A. He was not.

Q. Now, what conversation did you have with Tony that time? A. I asked him how George Needelmann could unload Pitzer's trucks and Fowser's trucks and draw pay from two outfits at the same time. When I asked him he just shrugged his shoulders and wouldn't say nothing. He didn't say anything at all. That is all there was to it. He wouldn't talk.

1902 Mr. Boudin: If your Honor please, I move to strike out that statement of the witness just given by him in answer to the last question.

The Court: Denied.

Mr. Boudin: Exception.

The Court: Pitzer and what was the other name?

Mr. Marks: Fowser.

Q. Is that right? A. Yes.

Mr. Marks: F-o-w-s-e-r.

Q. Do you remember any other specific conversation you had with Needelmann or Tony during that period?

The Court: One moment. Did I understand that Tony made no reply?

The Witness: That is right.

The Court: I will strike it out. The jury will disregard it. A statement made by this witness to which someone did not reply can't bind the person to whom the statement was made or to whom the 1904
inquiry was addressed.

Mr. Marks: A statement in the course of and in furtherance of a conspiracy.

The Court: Why? Is he in the conspiracy?

Mr. Marks: No.

The Court: Who is making the statement in furtherance of the conspiracy? One of the conspirators or one of the persons against whom the conspiracy is directed?

Mr. Marks: I had always thought that when a statement is made to a conspirator and he gives no answer to it——

The Court: If I ask you a question and you don't answer it, would you say because you don't 1905
answer the question that I asked you, it was admissible against you? Not at all.

Mr. Marks: That has been my understanding.

The Court: Well, your understanding is not in accordance with mine. I will strike it out and direct the jury to disregard it. Proceed.

By Mr. Marks.

Q. Do you remember any other specific conversation you had with George or Tony during the same period? A. No.

Q. I direct your attention specifically to the period when you first began to see them. Does that refresh your recollection? A. Yes.

Q. Can you tell us approximately what month this conversation was had? A. I can't tell you what month. It was in the spring of 1937.

Q. Can you tell us where the conversation took place?
1907 A. It was right around Hudson Street or Washington Street.

Q. Now, what was the conversation? A. My helper and I both told him that the next load we brought in we were going to go and unload it ourselves.

Q. Told whom? Who was there? A. George Needelmann.

Q. Anyone else? A. No, there wasn't.

Q. What was the reply? A. He said, "If you know what is good for you, Bill, you won't do it." He said, "A half dozen of us will just get you and beat the hell out of you, or we will run the truck in the river. It has been done before."

Mr. Marks: May I have this marked for identification.
1908

(Marked Government's Exhibit 12 for Identification.)

Q. I show you Government's Exhibit 12 for Identification and ask you if you have ever seen that before. A. I have seen plenty like that——

The Court: No. You were asked about that. Strike out the answer.

Q. Did you see that one before? A. Yes.

Q. When and where did you first see that? A. October, 1937.

Q. Do you remember when? A. Around the 29th.

Q. Who gave it to you? A. George Needelmann.

Q. Did you see him do anything with respect to that piece of paper? A. I seen him write all that on there.

Mr. Marks: I offer it in evidence.

The Court: Show it to counsel.

(Mr. Marks shows paper to defense counsel.)

(Government's Exhibit 12 for Identification received in evidence.) 1910

Mr. Marks: May I read it to the jury and then show it to them?

The Court: Yes.

Mr. Marks: Ladies and gentlemen, this slip of paper bears the date October 29th, received $9.42 from Wilmer Fidler, truck No. 20, George Needelmann (handing to jury).

Q. Do you remember the specific occasion when you first saw Government's Exhibit 12 in evidence? A. I don't know what you mean.

Q. Do you remember where it was? A. No.

Q. Do you remember what conversation you had with Needelmann when he gave you that? A. No, I don't. 1911

Q. Now, do you know what is meant by the term "gypsy" in the trucking industry? A. Yes.

Q. Can you tell us what is meant by that? A. When you determine—when you go and unload yourself without getting a City man to help you, they call you a gypsy. And different terms I have heard——

Q. No. Just answer the question.

The Court: That is an answer.

Q. Have you ever had any conversation with Needelmann about gypsies? A. Yes, sir.

Q. Can you tell us when? A. In the summer of 1937, I don't know the date of the month.

Q. Have you had one such conversation or more than one? A. More than one.

Q. Can you tell us about how many? A. At least a half-dozen.

Q. Now, during what period were those conversations? When was the first one and when was the last one? A. From the summer of 1937 until the fall.

Q. The fall of what year? A. 1937.

1913 Q. Was anyone else present during any or all of these conversations? A. No.

Q. Now, what conversations did you have with Needelmann about the word "gypsy"? A. Well, he told me different times after we came back off a load and got unloaded early—he said, "I am short in cash." He said, "I will go out and try to catch me another gypsy. I need the money."

Mr. Marks: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Now, in any of those transactions and conversations that you have testified to, can you tell us the places where
1914 the conversations were had? A. Economy Restaurant Supply Company on Greenwich Street,

Q. What other place? A. Max Ams in Greenwich Street.

Q. What other place? A. Reiss & Bernhard, North Moore Street.

Q. What other place? A. R. C. Williams Company.

Q. Any other place? A. Not that I can recall right now.

Q. Where did the conversation take place with Needelman where he told you that if he were not employed that you would probably find your trucks in the river and someone would beat hell out of you? Where was that? A. On Hudson Street or West Street.

Q. Well, which was it? A. I couldn't just be positive of it.

Q. Whose place of business was it? A. It was in the truck.

Q. Was your truck at any consignee's place of business at that time? A. No, it wasn't.

Q. Now, when you had any of those conversations in the spring of 1937 or the summer of 1937 was there anyone present besides yourself, Needelmann or Venditti that you can tell us about? A. My helper was present. 1916

Q. What is his name? A. Charles Wolf.

Q. Was he with you on all occasions when these conversations took place? A. He was right there all the time.

Q. On each occasion? A. Yes, sir.

Q. Now you belong to a union? A. Yes, sir.

Q. And what union do you belong to? A. Local 430, International Teamsters, Chauffeurs and Helpers.

Q. When did you become a member of Local 430? A. November, 1937.

Q. And are you still a member of that union? A. Yes, sir.

Q. Did you make application for membership in the union yourself? A. Yes, sir. 1917

Q. Did you go to the union when you made application? To the union headquarters? A. No.

Q. What? A. No.

Q. Have you ever been there? A. Yes.

Q. When were you there before June 1, 1938?

Mr. Cahill: If your Honor please, I object to this.

A. I can't tell you the date.

1918

The Court: I will allow it.

Mr. Cahill: Not within the scope of the direct.

The Court: No, it is not.

Q. You can't tell us the date? A. I can't tell you the date, but I know it was the first Sunday of the month.

Q. Do you know who the president of that local is? A. Right now?

Q. Yes. A. Thomas O'Brien.

Q. Do you know who the president of the local was in the fall of 1937? A. No, I don't.

Q. Do you know wh the delegate of that union was? A. Forey.

1919

Mr. Cahill: I press my objection, your Honor.

The Court: I think myself it is far-fetched, but it may have some bearing on the question of the ability of this witness to remember things. That is about all that I can see that it has any materiality in. Sometimes a man remembers some things and doesn't remember others. The one way of testing his recollection is to see what he can remember.

Q. You testified, did you not, that some time in December, 1936, you saw two men? A. Yes.

Q. And had a conversation with them? A. Yes.

Q. Is that right? A. Yes.

1920

Q. You don't know who the men are? A. I do not.

Q. Have you ever seen them since? A. I have.

Q. Can you tell us where you met those two men? A. Since?

Q. In December of 1936. A. In Greenwich Street.

Q. On the street, was it? A. That is right.

Q. Was it at any consignee's place where you were delivering your merchandise? A. It was.

Q. Well, whose was it? A. Economy Restaurant Supply.

The Court: Economy you say?

The Witness: Yes, sir.

The Court: Well, some time ago I understood you to say Connelly. Did I misunderstand you?

The Witness: Yes, you misunderstood me.

The Court: When you previously said what I thought was Connelly you meant Economy?

The Witness: That is right.

Q. You mean Economy Supply Company, is that what you said? A. Yes. Economy Restaurant Supply Company. That is right.

Q. What date was that in December, 1936, that you met these two men and had a conversation with them? 1922
A. I don't remember the date.

Q. Did you make any note of it in writing? A. I got a receipt for the $9.42.

Q. Well, have you got that receipt now? A. No, I don't.

Q. When did you last see it? A. When I turned it in to the boss to collect my money.

Q. That was how long ago? A. It was the next day after I saw him.

Q. That was in 1936, was it? A. That is right.

Q. Then you testified that some time afterward you saw the same men in the company of Needelmann? A. Yes, sir.

Q. When was that? A. I don't know the date. 1923

The Court: How long after he means.

The Witness: It was only a matter of a few weeks.

Q. Now, you say that you saw Needelmann between December, 1936 and the 1st of May, 1937? A. The 1st of May?

Q. Yes. A. Yes.

Q. There is no doubt about that in your mind, is there? A. No, there isn't.

Q. Do you know what Needelmann's occupation was in the first part of May, 1937? A. I do not.

Q. Did you know he was in business for himself at that time? A. No.

Q. Will you try to fix the date when you say you saw Needelmann in the company of the two men that had spoken to you in December, 1936? A. I can't fix the date. All I know is 1937.

Q. Can you fix the month? A. No.

1925 Q. Or the place? A. No.

Q. Or who was with you? A. My helper.

Q. And his name again was what? A. Charles Wolf.

Q. Did you always have the same helper? A. I did.

Q. Who was with Needelmann? A. Tony was with him practically every time I saw him.

Q. Anyone else you can tell us about or identify? A. I saw Frankie Downs with him lots of times.

Q. Yes. Anybody else? A. Not that I can recall.

Q. Now let me ask you: Outside the date of October 29, 1937, which appears on Government's Exhibit 12, this so-called receipt, can you give us a single date when you have had any conversation with Needelmann or Venditti? A. No, I can't give you the date.

Q. Can you give us the month? A. Quite a few different
1926 months. Which month I couldn't figure out one particular month and say.

Q. Is it true that the best you can do on dates is that these occurrences happened between December, 1936 and the fall of 1937? A. Yes.

Q. Is that the best you can do so far as fixing the time of any one of those occurrences? A. Yes.

Q. You can't do any better, is that correct?

Mr. Cahill: Objected to as repetitious, your Honor.

The Court: I will allow it.

A. No, I can't fix no certain date.

Q. Was there any record that you kept which would refresh your recollection as to the particular dates and the places of delivery when you came to New York with your merchandise? A. No, I don't have no record outside of the receipts I got.

Q. Did you keep a card showing the number of hours that you traveled?

Mr. Cahill: I object to this as not within the scope of the direct. 1928

The Court: I sustain the objection.

Mr. Murray: The only reason is I am looking for something to refresh his recollection.

Q. Was there any written memorandum that you can consult that will assist you in giving the dates and days for those conversations and occurrences that you testified to here this morning? A. Not that I know of.

By the Court.

Q. Was there any particular receipt that you obtained from Needelmann or anybody else and turned into your company that would refresh your recollection as to any conversation you had on the occasion when you received such receipt? A. Well, all the receipts I gave him for that $4 when he wanted a full day's pay. 1929

Q. Well, anyone outside of that? A. No.

By Mr. Murray.

Q. Have you got the receipt that he gave you for the $4?

The Court: That is here.

A. I haven't.

The Court: Isn't it?

Mr. Murray: No, your Honor. This receipt is for $9.42, October 29.

The Court: I am sorry.

1931 Q. Have you got the receipt which you say Needelmann gave you for the $4? A. No.

Q. Do you know where it is? A. I turned it into the boss to get my money for it.

Q. Did you ask the boss for it when you were coming down here today? A. No.

Q. Did you ask him for any other receipt? A. No.

Q. That you say that Needelmann or anyone else gave you? A. No.

Q. Now, you testified to an occasion when Needelmann spoke to someone else who was driving a truck. Where did that take place? A. Reiss & Bernhard, North Moore Street.

The Court: Well, we will suspend here until

1932 two o'clock.

(Recess to 2.00 P. M.)

AFTERNOON SESSION 2 P. M.

(Discussion off the record.)

The Court: Let it appear upon the record that the Court consulted the foreman of the jury and with the defendants, and that none of them feel that there is any necessity from a religious standpoint to adjourn this case over the holy days which begin tonight.

We will proceed with the trial.

WILMER FIDLER, resumed the stand and further testified 1934 as follows:

Cross-examination continued by Mr. Murray.

Q. You testified this morning, did you not, to an incident where a truck driver was struck and kicked? Do you remember that? A. Yes.

Q. What was the name of that man? A. I don't know.

Q. Whose truck did he drive? A. I don't know that.

Q. Where did it happen? A. At Reiss & Bernhard, North Moore Street.

Q. Was there a platform man there at that time? A. No.

Q. When you made your deliveries at that concern do you carry them into the warehouse yourself? A. No; we load them on a truck right at the back end of the truck at the platform. 1935

Q. Was there a police officer in the immediate neighborhood at the time? A. I didn't see one.

Q. Who was present besides yourself, Needelmann and the truck driver? A. Myself, the truck driver, Needelmann and a couple of other guys.

Q. Who else, if you know?

The Court: Speak a little louder.

A. I don't know.

Q. Can you give me the name of any other person who was present except those that you have just mentioned? A. No, I can't.

Q. Can you give me the name on the truck of the man that you said was struck and kicked? A. No, I can't.

Q. Or the license number? A. No.

Q. Can you tell me whether or not it had a New York license number or a license number from some other state?

1937 A. No, I can't tell you that.

Q. Can you tell me the date? A. No, I can't.

Q. Can you tell me the month? A. No.

Q. Can you tell me the time of year? A. It was in the summer of 1937.

Q. Early summer or late summer? A. Early summer.

Q. And what is your conception of early summer of 1937? A. Around May and June.

Q. Did you see that truck driver again? A. Not that I knowed him.

Q. Did you talk to Needelmann about the incident? A. No, I didn't.

Q. Did you talk to your helper about the incident? A. Yes, we talked about it.

1938 Q. Did you report it back to your employer when you got to Pennsylvania? A. I did.

Q. Did he make a note of it, do you know? A. Not that I know of.

Q. Did you ever make any written memorandum about the incident? A. No, I did not.

Q. Did you report that incident to any New York City police officer? A. No, I did not.

Q. Did you see a city policeman there at the time in the immediate vicinity of where this occurred? A. No.

Q. Did you ever drive what is called a flyer? A. No, I did not.

Q. Do you know what a flyer means? A. A train of some kind, I guess.

Q. Well, do truck drivers ever employ the term "flyer" to indicate a rapid trip from your place in Pennsylvania and back again without any stops? A. No.

Q. Did you ever make such a trip? A. No.

Q. Now, on this occasion when you say a man was struck, what time did you leave home on that day or night to get to New York? A. Around 2 or 3 o'clock in the afternoon.

Q. What time did you get into New York? A. 3 or 4 o'clock in the morning. 1939

Q. Do you mean that the trip took about twelve hours continuous driving? A. No.

Q. Did you go any place before you came to New York and after you left Pennsylvania? A. I always stop at Unionville.

Q. Always? A. Always.

Q. Was there any time that you did not stop at Unionville on your trips to New York? A. No.

Q. Did you ever get into New York about 4 or 5 o'clock in the morning? A. Yes.

Q. And sleep in your truck until the warehouses open? A. We have done that already.

Q. Have you done it frequently? A. Not frequently, but a few times. 1941

Q. What time did you start back to Pennsylvania on the day of this incident where you say the man was struck? A. Right around dinner time.

Q. And that was what time? You mean in the middle of the day? A. Between eleven and twelve.

Q. What time did you get home that night? A. Around 8 o'clock in the evening.

1942

Q. What ton truck did you drive? A. Nine-ton truck.

Q. What tonnage was your load ordinarily? A. Nine ton.

Q. What did you cart as a rule? A. Canned goods.

Q. Did you ever cart anything but canned goods? A. Fresh apples.

Q. Anything else besides that? A. No.

Q. Well, now, how long had you had a license to drive as a chauffeur? A. I had a driver's license for about twelve years.

Q. Did your helper have a license? A. Yes.

Q. To drive? A. Yes, sir.

1943

Q. Do you know when he got his license? A. No, I don't.

Mr. Murray: That is all.

The Court: Anything further?

Mr. Ennis: Nothing further, your Honor.

(Witness excused.)

1944